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Human rights questions: implementation of human rights instruments

Effective implementation of international instruments on human rights, including reporting obligations under international instruments on human rights

Note by the Secretary-General

The Secretary-General has the honour to submit to the General Assembly the report of the chairpersons of the human rights treaty bodies on their sixteenth meeting, held at Geneva from 23 to 25 June 2004, pursuant to General Assembly resolution 57/202 of 18 December 2002.

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Report of the chairpersons of the human rights treaty bodies on their sixteenth meeting

Summary

The General Assembly, in its resolution 57/202, requested the Secretary-General to submit to the General Assembly the reports of the persons chairing the human rights treaty bodies on their periodic meetings. The present document contains the report of the sixteenth meeting of chairpersons of human rights treaty bodies; the report of the fifteenth meeting was submitted to the General Assembly at its fifty-eighth session (A/58/350).

The sixteenth meeting of chairpersons of human rights treaty bodies was convened in Geneva from 23 to 25 June 2004, pursuant to General Assembly resolution 49/178 of 23 December 1994. The chairpersons considered follow-up to the recommendations of the fifteenth meeting and reviewed developments relating to the work of the treaty bodies. They also considered draft guidelines on an expanded core document and treaty-specific targeted reports and harmonized guidelines on reporting under the international human rights treaties. The chairpersons met with representatives of the specialized agencies and United Nations departments, funds and programmes, with representatives of States parties and with members of the Bureau of the Commission on Human Rights, including the Chairperson. The sixth joint meeting of treaty body chairpersons, special rapporteurs/representatives, independent experts and chairpersons of working groups of the special procedures of the Commission on Human Rights, which included a meeting with the Chairperson of the Board of the Voluntary Fund for Technical Cooperation, was also held. The chairpersons adopted recommendations, which are contained in section IX of the present report. The report of the third inter-committee meeting of human rights treaty bodies (Geneva, 21 and 22 June 2004), which was considered by the chairpersons, appears in annex I to the present report.

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I. Introduction

1. The sixteenth meeting of chairpersons of the human rights treaty bodies, convened pursuant to General Assembly resolution 49/178, was held at the Office of the High Commissioner for Human Rights (OHCHR) in Geneva from 23 to 25 June 2004. The meeting was preceded by the third inter-committee meeting, held on 21 and 22 June 2004.

II. Organization of the meeting

2. The following chairpersons of human rights treaty bodies attended: Ms. Feride Acar, Chairperson of the Committee on the Elimination of Discrimination against Women (CEDAW); Mr. Abdelfattah Amor, Chairperson of the Human Rights Committee (HRC); Ms. Virginia Bonoan-Dandan, Chairperson of the Committee on Economic, Social and Cultural Rights (CESCR); Mr. Jakob E. Doek, Chairperson of the Committee on the Rights of the Child (CRC); Mr. Prasad Kariyawasam, Chairperson of the Committee on Migrant Workers (CMW); Mr. Fernando Mariño Menendez, Chairperson of the Committee against Torture (CAT); and Mr. Mario Jorge Yutzis, Chairperson of the Committee on the Elimination of Racial Discrimination (CERD).

3. The meeting was opened by Mr. Doek, the Chairperson of the fifteenth meeting of chairpersons, on 23 June 2004.

4. Mr. Kariyawasam was elected Chairperson-Rapporteur of the meeting, and Mr. Mariño Vice-Chairperson. The chairpersons adopted the proposed agenda (HRI/MC/2004/1) and programme of work.

III. Streamlining of working methods: review of recent developments relating to the work of the treaty bodies

5. Mr. Kariyawasam, in his capacity as CMW Chairperson, outlined the results of the first session of his Committee which had met in Geneva from 1 to 5 March 2004. The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families entered into force on 1 July 2003, and had 25 States parties, most of which could be classified as "sending countries". Twenty-three States parties were required to submit their initial reports by July 2004 but, in light of the efforts to streamline working methods and harmonize the reporting guidelines of treaty bodies, the Committee had deferred adoption of reporting guidelines until after the third inter-committee meeting while at the same time stressing that States were not released from their reporting obligations. The Committee had adopted provisional rules of procedure, and decided that the members should adopt, informally, an advocacy role to promote ratification of the Convention. The Chairperson requested the support and assistance of the other treaty bodies in this respect.

6. Ms. Acar provided information on the informal meeting of CEDAW, convened in Utrecht, the Netherlands, in May 2004, with the support of the Netherlands Institute of Human Rights, to discuss working methods. She noted that the Committee's success in encouraging reporting by the Convention's 177 States

parties, especially by States whose reports had been long overdue, had resulted in a backlog of unconsidered reports. The Committee's workload had further increased as it began receiving its first individual communications under the Convention's Optional Protocol, which also set up an inquiry procedure. The Convention provided that the Committee would meet for two annual sessions of two weeks only, although its sessions currently extended to three weeks pursuant to a General Assembly resolution of 1996. The informal meeting considered ways of addressing the workload, including the option of meeting in parallel groups. While no consensus had been reached, the Committee decided to request the General Assembly to provide an additional week of meeting time for its July 2005 and two 2006 sessions, and that, as from 2007, it should meet in three annual sessions of three weeks, each preceded by a one-week pre-sessional working group. The meeting approved amendments to working methods, including standardized treatment of initial and periodic reports, with all reports being considered in two meetings instead of three, after the pre-sessional working group had drawn up lists of issues for the States. The role of the country rapporteurs would be strengthened: in addition to taking the lead in identifying issues to be reflected in concluding comments, they would have responsibility to brief the Committee on both initial and periodic reports. The idea of a country task force to lead the dialogue with States had been welcomed in principle and would be tested at the next session. Consideration in the absence of a report of States parties with long-overdue reports was approved as a measure of last resort, and the Secretariat was asked to provide the Committee with a list of States with long-overdue reports to be considered for this procedure. The decisions of the meeting would be formally adopted at the next Committee session in July 2004.

7. Mr. Doek drew attention to the decision by CRC to meet in two parallel chambers, noting that the Committee gave the highest priority to the constructive dialogue with States and follow-up to its concluding observations. There was a two-year backlog of reports awaiting consideration, which Mr. Doek considered threatened the credibility of the treaty monitoring system and tacitly invited non-reporting, and the second periodic reports of approximately 100 States were overdue (10-20 of them for more than five years). Reports on the implementation of the two Optional Protocols to the Convention would soon be submitted by States parties, adding to the workload. In the light of its workload, the Committee had no capacity to implement additional procedures to follow-up on concluding observations. The two-chambers proposal, which would allow the Committee to increase its working capacity without increasing the number of annual sessions, would be considered by the General Assembly at its fifty-ninth session. It was hoped that further workshops would build on the success of the regional workshop on the implementation of the concluding observations of the Committee held in Damascus in December 2003. Mr. Doek reported that he, another member of the Committee and its Secretary had visited the Democratic People's Republic of Korea in April 2004, immediately before the consideration of the report of that State, and similar missions were planned.

8. Mr. Mariño stated that CAT had requested that its autumn session be extended by one week. Procedures to encourage reporting had been adopted in view of the high number of overdue initial reports, and some States had submitted reports following the Committee's requests. Implementation in States that persistently failed to report would be considered in the absence of a report. The Committee planned to formulate general comments and hold thematic debates on issues related to torture

and inhuman treatment in which members of other Committees could be invited to participate. An exchange of views with members of other committees on the interpretation of provisions of the Convention in the light of the other human rights treaties and other international standards would also be encouraged.

9. Mr. Yutzis noted that CERD faced obstacles similar to those faced by the other treaty bodies, especially with regard to non-reporting. Of the backlog of reports overdue, one third had been overdue for more than five years and six reports were more than 20 years overdue. The "review procedure" (under which a country is considered in the absence of its report) had motivated several States parties to produce reports. The explicit appeal to States to make a declaration under article 14 accepting the Committee's competence to receive communications and to remove reservations to the Convention, made in the Durban Programme of Action (A/CONF.189/12, Chap. I, Programme of Action, para. 75) had attracted little response: only 45 of the Convention's 136 States parties had accepted article 14. In the context of early warning and prevention, Mr. Yutzis suggested that the treaty bodies should develop forward-looking mechanisms to assist each other in detecting and alerting others to potential conflicts. He also encouraged members of other treaty bodies to participate in thematic debates as they often concerned issues which cut across the different treaties.

10. Ms. Bonoan-Dandan noted that CESCR had implemented the practice of drafting lists of issues since 1991, with country rapporteurs drafting the initial list which was revised and adopted during the pre-sessional working group. Lists of issues included a note to the State party stating that the list was not exhaustive and that other issues might be raised, and requesting that written replies be submitted in time to allow for translation. The Committee had limited the number of questions for initial and periodic reports so as not to overburden States. The problem of delegations that failed to attend sessions at which their reports were scheduled for consideration was highlighted, as was the Committee's policy of not granting last-minute requests for postponement of consideration of reports and considering the report in the absence of a delegation, since last-minute postponement disrupted the Committee's work. The Committee had well-developed procedures to allow for participation by non-governmental organizations (NGOs): since 1993 NGOs had met with the Committee in an open meeting with interpretation on the first afternoon of each session and the Committee had issued guidelines on the nature of the input from NGOs. The Committee's cooperation with the United Nations Educational, Scientific and Cultural Organization (UNESCO) within the Joint Expert Group (JEG) on the right to education was developing: the group had met twice, and members of the Committee on Conventions and Recommendations of the UNESCO Executive Board had observed CESCR at work. The Committee was also exploring the possibility of establishing a JEG on labour rights with another specialized agency. A general discussion on article 6 (right to work) had been held and a general comment was being drafted. The draft general comment on article 3 (equality between men and women) would be adopted in the autumn.

11. Mr. Amor stated that the procedures of HRC to deal with non-reporting had proven satisfactory with the Committee considering the human rights situation in non-reporting States in the absence of a report or delegation. Country task forces, which took the lead in the examination of individual State party's reports, ensured the effective use of time. The quantity of individual communications received by the Committee had obvious implications for its workload and members were concerned

that, whilst criticizing States that were late in reporting, the Committee itself was tardy. Mr. Amor underlined the important role played by the treaty bodies in the development of jurisprudence, drawing attention to the Committee's general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant.

12. Mr. Doek noted that the jurisprudence of CRC was relatively unknown and underused. The clear congruence that existed between many of the provisions of the treaties meant that the jurisprudence of each treaty body should be taken into account by other treaty bodies, as well as other bodies, and the Secretariat was urged to introduce measures to make the corpus of jurisprudence, and related commentaries, readily available.

IV. Dialogue with members of the African Commission on Human and Peoples' Rights

13. The Chairperson welcomed members of the African Commission on Human and Peoples' Rights, who attended the meeting as observers. Commissioner Rezag-Bara introduced the African system for the protection of human rights, based on the 1981 African Charter ratified by all 53 African States without reservation. The activities of the Commission were similar to those of the treaty bodies, and included the consideration of States parties' reports and individual communications. The Commission was considering procedures to follow-up their recommendations at the national level and had created a number of special rapporteurs on human rights defenders, detention, women's rights, refugees and displaced persons and a working group on indigenous persons. Thirty States in the region had national human rights institutions and the Commission had developed close links with these bodies, while 300 NGOs had observer status with the Commission. The Protocol creating an African Court on Human and Peoples' Rights had entered into force on 24 January 2004, and the Court, whose work would be complementary to that of the Commission, was currently being established. Commissioner Rezag-Bara drew attention to a number of other African initiatives, including the New Partnership for Africa's Development (NEPAD) initiative that sets up a system of voluntary peer review.

14. The chairpersons underlined the importance of regional mechanisms for the promotion and protection of human rights, regretting that such a system did not exist in Asia, emphasized the value of cooperation with other regional bodies and systems and looked forward to further exchanges with the African Commission. They agreed that a letter expressing gratitude for the attendance of the commissioners and supporting the work of the Commission would be transmitted to the Commission by the chairpersons.

V. Cooperation with the specialized agencies and United Nations departments, funds and programmes

15. The representative of the United Nations Children's Fund (UNICEF) welcomed efforts to enhance the treaty bodies' work, noting that the draft harmonized reporting guidelines were a good starting point. The value of identifying

commonalities among the treaties was highlighted, but it was noted that a focus on children was critical, and child-specific elements of the general information requested in the core document should not be lost. The strength of reporting lay in the processes involved in the preparation of reports, which brought together different partners, an element that should not be lost in the revised reporting system. The value of input to treaty bodies from the country level, as opposed to headquarters level, could not be overstated.

16. The representative of the International Labour Organization (ILO) emphasized its interaction with most of the treaty bodies and looked forward to close collaboration with the CMW, particularly as the recently concluded International Labour Conference had a general discussion on migration and employment. There was mutual interest in making the process of collaboration with the treaty bodies efficient and productive. The ILO Committee of Experts had collaborated with CESCR on the draft general comment on the right to work, and would continue to provide written input to treaty bodies where their work intersected with that of ILO. However, specialized agencies needed to be sure that their participation was mutually beneficial and further reflection was required on ways of rights-based programming for development within the context of action 2 of the report of the Secretary-General (A/57/387 and Corr.1), which aimed at strengthening United Nations human rights-related actions at the country level.

17. The representative of the Office of the United Nations High Commission for Refugees (UNHCR), highlighting the multifaceted linkages between refugee issues and human rights, noted that the Executive Committee of the UNHCR had recently strengthened its normative framework for cooperation (conclusion No. 95 (LIV)). He welcomed cooperation on drafting general comments and participation in thematic debates. He observed that a number of issues raised by UNHCR, in particular the challenge of consistency in the examination of reports, had been taken up by treaty bodies and called for further efforts to harmonize working methods. The decision that each committee would appoint a focal point for cooperation with United Nations entities was welcomed. He supported the approach of the draft reporting guidelines, stressed the need for complementary guidelines on the treaty-specific documents and looked forward to close involvement in their further development. The activities to implement action 2 were strongly supported.

18. The representative of the Department of Public Information of the secretariat noted that, despite public interest in human rights issues, there were few editorials on the work of the committees and coverage was limited and often superficial, in particular in the local press. Dissemination of information was faster, but problems of substance remained, and there were limited funds for coverage of human rights. She suggested the adoption of a promotional approach to cover major issues of concern so as foster awareness of the work of the committees in the international community. She welcomed the decision of the third inter-committee meeting that treaty bodies appoint a liaison point with the Department to ensure the accuracy of press releases and that these should bear a disclaimer.

19. The representative of the International Organization for Migration (IOM) noted the common aims of CMW and IOM in promoting the rights of migrants and highlighted the role of IOM in advocating ratification of the Convention. She also emphasized the commitment of IOM to working with other treaty bodies on migration issues.

20. The representative of UNESCO noted that the core mandate of her organization, "Education for All", complemented the work of many of the treaty bodies and committed UNESCO to enhanced cooperation. She noted that the draft convention on cultural diversity currently under consideration and the UNESCO strategy on human rights and gender equality was being finalized.

21. The representative of the World Health Organization (WHO) introduced the Organization's efforts to support its member States in reporting and implementing concluding observations relevant to health. Such efforts include capacity-building of multi-stakeholders at regional and country level. The structure of the guidelines for the core document was satisfactory, but common principles such as non-discrimination should also be considered with regard to each treaty provision. Harmonization of the working methods of the committees was crucial, including standardizing terminology relating to the technical elements of their work and consistent follow-up of concluding observations among the committees. Further coordination among various national stakeholders should be encouraged.

22. The Secretary-General of the Inter-Parliamentary Union (IPU), Mr. Anders Johnsson, provided examples of parliamentary hearings which reviewed Governments' submissions to treaty bodies, and called for greater cooperation between parliaments and the committees. IPU encouraged parliaments to work for the implementation of treaty body recommendations. The number of parliamentary committees with a human rights mandate had increased in recent years, and IPU had invited the chairpersons of these committees to Geneva during the sixtieth session of the Commission on Human Rights. A handbook for parliamentarians on human rights mechanisms was being prepared and other handbooks, including one on CEDAW and its Optional Protocol, had been published. The IPU Committee on the Human Rights of Parliamentarians had dealt with over 1,000 cases of violations of the rights of parliamentarians in the 30 years since its establishment.

23. The chairpersons emphasized the important linkages and the complementarity between the work of the treaty bodies and United Nations entities and other bodies. They also underlined the importance of training the staff of United Nations entities in the treaty body system, as well as involving parliamentarians in the reporting process and follow-up to concluding observations.

VI. Cooperation with the Commission on Human Rights and the Sub-Commission on the Promotion and Protection of Human Rights

24. On 24 June 2004, the chairpersons met with the Expanded Bureau of the sixtieth session of the Commission and with a representative of the Chairperson of the fifty-fifth session of the Sub-Commission on the Promotion and Protection of Human Rights, Mr. Paulo Sergio Pinheiro.

25. The Chairperson, Ambassador Mike Smith, welcomed the opportunity to engage in a dialogue with the treaty bodies and acknowledged their increasing importance, and their efforts to improve their working methods. He affirmed the need to enhance communication and cooperation with the respective committees and noted that the chairpersons had been invited to address the sixtieth session of the Commission, although only three had been able to attend. He summarized the main

achievements of the sixtieth session and, in particular, the adoption of resolution 2004/78 on the effective implementation of international instruments on human rights.

26. Mr. Pinheiro described the outcome of the fifty-fifth session of the Sub-Commission, highlighting the appointment of new special rapporteurs and the identification of new subjects for investigation, and suggested possible ways of enhancing the interaction between the treaty bodies and the Sub-Commission, inter alia through joint discussions with the treaty bodies on issues of common concern during the annual sessions of the Sub-Commission.

27. In the ensuing discussion, the chairpersons and members of the Expanded Bureau addressed time management at the Commission, in particular the time allocated for statements made by the chairpersons. They underlined the need for the Commission to take into account the work of the treaty bodies so as to follow the progressive development of international human rights law, and suggested that informal dialogues between the Commission and the treaty bodies, as well as additional side events either for all or for specific treaty bodies, be convened.

VII. Sixth joint meeting of the chairpersons of the human rights treaty bodies and special procedures mandate holders

28. On 23 June, the chairpersons held their sixth joint meeting, co-chaired by Mr. Theo van Boven (Chairperson of the meeting of special rapporteurs/ representatives, experts and chairpersons of working groups of the special procedures of the Commission of Human Rights) and Mr. Prasad Kariyawasam (Chairperson of the meeting of the chairpersons of the human rights treaty bodies), with the special procedures mandate-holders.

29. For the first time, the joint meeting met with the Chairperson of the Board of the Voluntary Fund for Technical Cooperation in the Field of Human Rights, Mr. Thomas Hammarberg, who indicated that assistance provided by the Fund could be used to encourage States to ratify treaties, to assist them to report and to implement substantive obligations at the national level. This was in line with the recommendations of the global review of the OHCHR technical cooperation programme, which suggested better coordination among the different fields of work carried out by OHCHR (i.e. technical cooperation, treaty bodies and special procedures). The Board considered that better communication of treaty body recommendations to the national level, country visits (especially for the follow-up of treaty body recommendations), and deepening the engagement of civil society (including NGOs and national human rights institutions) and specialized agencies in the reporting process and national implementation of the treaties were also priority concerns.

30. The practice of treaty bodies' suggesting, in their concluding observations, that States should seek technical assistance when implementing their treaty obligations and the committees' recommendations was welcomed, although it was suggested that the impact of such recommendations should be assessed. Mr. Hammarberg underlined the importance of creating opportunities for treaty body members to interact with United Nations field presences, as that would assist treaty bodies to

formulate recommendations in a way that was understood by donors and allowed field presences to encourage their implementation.

31. Chairpersons and special procedures mandate-holders encouraged the Chairperson of the Board of the Voluntary Fund to continue discussions in order to deepen their cooperation. Special mention was made of the potential for cooperation between the Board of the Fund and CMW in efforts to encourage ratification.

32. The joint meeting also took up the thematic issue of the impact of counter-terrorism measures on human rights. The Secretariat drew attention to the study requested by the General Assembly its resolution 58/187 on the extent to which the human rights special procedures and treaty monitoring bodies were able, within their existing mandates, to address the compatibility of national counter-terrorism measures with international human rights obligations. It was also noted that at its sixtieth session the Commission had decided to appoint an independent expert to examine the question of the protection of human rights and fundamental freedoms while countering terrorism, and that the 2003 "Digest of Jurisprudence of the United Nations and Regional Organization on the Protection of Human Rights while Countering Terrorism" was being updated.

33. Several participants pointed out that counter-terrorism measures had far-reaching consequences for the work of most of the mandates present (both treaty bodies and special procedures mandate-holders). The study should identify those areas where collaborative reporting could be undertaken and propose comprehensive solutions (at country and at regional level) to include both the work of the treaty bodies and special procedures-mandate-holders.

34. The panoply of national and international human rights norms and standards should not be disregarded when addressing this issue. In particular, general comments No. 29 and No. 31 of the Human Rights Committee offered guidelines on the principle of proportionality and non-derogable rights. The non-derogable nature of the prohibition of torture and the principle of non-refoulement to a State where there were substantial grounds for believing that a person would be in danger of being subjected to torture were also highlighted.

35. The impact of counter-terrorism measures on vulnerable groups (such as children or migrants) required further consideration, in particular with regard to the enjoyment of their economic, social and cultural rights. Concern was also expressed with regard to the legitimization of discrimination vis-à-vis certain groups, in particular within the penal justice system. The use of anti-terrorism measures to suppress democracy movements or to justify human rights violations was condemned, as was the emerging practice of equating struggles for self-determination with terrorism.

36. It was recommended that treaty bodies and special procedures cooperate on this issue. Treaty bodies should continue to address the theme in their concluding observations and general comments, as well as in considering relevant individual communications. They should also deepen their collaboration with the Counter-Terrorism Committee.

VIII. Informal consultations with States parties

37. The sixteenth meeting of chairpersons held informal consultations with States on 24 June. Seventy-seven States participated in this meeting, as well as observers from the African Union and the European Commission. States welcomed the opportunity to provide input into the process of streamlining and harmonizing the working methods of the treaty bodies and reporting requirements. Although noting that it was for the treaty bodies themselves to lead the process, they encouraged further consultations as it developed.

38. The process of streamlining and harmonizing the working methods of the treaty bodies should strengthen and modernize the committees, but should not dilute their crucial role in the protection and promotion of human rights. States recognized the treaty bodies as the cornerstones of the human rights machinery, evidenced by the unanimous adoption by the Commission of resolution 2004/78, which should be used as a tool and reference point. In this context, the importance of treaty body activities being funded from the regular budget was stressed. The meetings of chairpersons and the inter-committee meetings were now regarded as an integral part of the human rights agenda and as forums for the treaty bodies to share best practices and increase cooperation.

39. Most States endorsed the draft reporting guidelines, considering them a good basis for continued efforts to streamline the functioning of the treaty bodies. The holistic approach to human rights reflected in the document could ensure coherence and closer cooperation across the treaty body system and avoid duplication and conflicting interpretations of human rights provisions. Such an approach would also assist in mainstreaming human rights across the United Nations system. It was important, however, to ensure that the specificity of the individual treaties was not diluted. Certain areas required clarification, including the length of the reporting cycle (and the period of validity of the core document) and the time-frame for the adoption of the guidelines for both the common core document and the treaty-specific documents. The particular situation of federal States should also be addressed. Concern was expressed as to the important organizational challenge, and possible burden, for States in preparing the common core document, especially with regard to data compilation. It was observed that some data and information requested by the guidelines might fall outside the human rights field, and reservations were expressed regarding the term "indicators". A practical simplified approach to reporting which did not add to the burden on States parties was called for and the importance of conducting a pilot study, particularly in developing countries, was underlined.

40. One State outlined a project currently under way to establish a "joint reporting system", for which an extended database was being crafted, with a view to producing reports through database technologies. A matrix to assist in collecting information was being prepared and would be provided to the Secretariat in autumn 2004. This State was also considering establishing a standing working committee to synchronize the preparation of reports.

41. With regard to working methods, States called on those committees which had not yet adopted follow-up procedures or introduced pre-sessional working groups to do so. Lists of issues were regarded as a means of focusing the preparation of delegations for the constructive dialogue with the committees. Being provided with

all of the materials submitted to the committees (such as reports from NGOs and specialized agencies) would also assist States. It was noted that consistency in working methods across treaty bodies would lead to better results, and that treaty bodies should consider ways of making constructive dialogue with States parties more interactive. The practice of annexing the comments of States parties to the concluding observations of committees was welcomed by one State.

42. The accuracy of press releases was a concern of several States, and chairpersons recalled the recommendation of the third inter-committee meeting by which all press releases should include a disclaimer stating that they did not constitute official records and which called upon all committees to appoint a focal point to ensure that they reflected the concluding observations. A maximum time period for treaty body mandate-holders was also proposed in order to ensure continuous renewal and development of treaty bodies. The approach of treaty bodies to reservations was raised by one State, while another underlined the importance of treaty bodies' providing input into the working group on the effective implementation of the Durban Declaration and Programme of Action.

43. States encouraged treaty bodies to make their recommendations as concrete and detailed as possible in order for them to be of greater use to States, as well as to be able to be fed into the plans of action of United Nations country teams. Technical cooperation should be more readily available for States wishing to prepare reports or which request assistance for the follow-up to concluding observations. In this context, the growing practice of convening regional and subregional workshops to follow up concluding observations was welcomed. The potential for using new technologies to facilitate reporting was also raised.

44. States were sensitive to the challenges being faced by the treaty bodies, in particular in such areas as non-reporting and the backlogs being experienced by some treaty bodies. Creative and flexible thinking on how to reduce this backlog, such as the proposal that the Committee on the Rights of the Child sit in two chambers, was welcomed by several States.

IX. Decisions and recommendations

Adoption of the points of agreement of the inter-committee meeting

A. **The sixteenth meeting of chairpersons endorsed the points of agreement concluded at the third inter-committee meeting (annex, sect. VI). The chairpersons called upon the human rights treaty bodies to follow up on those recommendations and to report on their implementation at the seventeenth meeting in 2005.**

Technical cooperation

B. **The chairpersons called for greater opportunities for interaction with the Board of Trustees of the United Nations Voluntary Fund for Technical Cooperation in the Field of Human Rights.**

C. **The chairpersons requested that the Secretariat review the impact of recommendations of the treaty bodies in their concluding observations/ comments calling for States to consider requesting technical assistance**

with respect to certain areas, in particular those relating to the preparation of reports required by the human rights treaties.

Jurisprudence of treaty bodies

D. **The chairpersons requested the Secretariat to consider means of presenting the corpus of treaty body jurisprudence in an accessible way, along with commentaries, to allow it to be used more effectively by all treaty bodies and others.**

Cooperation with special procedures mandate-holders

E. **The chairpersons, reiterating the inter-committee meeting (annex, para. 49), recommended that funds be made available to support the interaction of special procedures mandate-holders with the treaty bodies, including through attendance at sessions of treaty bodies.**

Cooperation with field presences

F. **The chairpersons recommended that consideration be given to providing a forum for representatives of OHCHR field presences to meet with the treaty bodies.**

Cooperation with United Nations agencies and other entities

G. **The chairpersons recommended that more time be allocated at the next meeting of chairpersons for dialogue with specialized agencies and other entities, in particular the Inter-Parliamentary Union, and that the discussions focus on best practices, difficulties and problems in the implementation of the concluding observations/comments, and ratification strategies.**

H. **The chairpersons recommended that United Nations country teams be encouraged to submit integrated country-specific input to the treaty bodies relating to the States whose reports are scheduled for consideration.**

I. **The chairpersons recommended that the United Nations partners work with States parties through technical cooperation programmes to improve the quality of reporting systems at the country level.**

Cooperation with the African Commission on Human and Peoples' Rights

J. **The chairpersons decided that a letter expressing support for the work of the African Commission on Human and Peoples' Rights and gratitude for the attendance of the commissioners would be transmitted to the Commission by the chairperson of the meeting on behalf of the chairpersons.**

Cooperation with the Commission on Human Rights

K. **Noting the point of agreement of the inter-committee meeting (annex, para. 48), the chairpersons recommended that further discussions be held with the Expanded Bureau of the Commission on Human Rights on**

modalities for constructive and interactive dialogue with the chairpersons of the human rights treaty bodies during the sixty-first session of the Commission. It entrusted its Chairperson to discuss this matter with the Expanded Bureau of the Commission in the course of the year.

NGO participation

L. **The chairpersons recommended that modalities for NGO participation in the work of the treaty bodies be considered at its next meeting and requested the Secretariat to prepare a background report on the practices of treaty bodies in this regard.**

Ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families

M. **The chairpersons recommended that all treaty bodies actively promote ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families by States parties.**

Participation in the inter-committee meeting

N. **The chairpersons recommended that the treaty bodies nominate participants in the inter-committee meeting with due consideration for continuity in participation.**

Request for postponement of consideration of reports by States parties

O. **The chairpersons decided to include an item on the agenda of its next session on the approach to be taken by treaty bodies when States parties submit a last-minute request for postponement of the consideration of their reports, as well as when delegations do not attend to present reports as scheduled.**

Organization of future meetings

P. **The chairpersons decided that the agendas of the inter-committee meeting/meeting of chairpersons be prepared in an integrated way in consultation with the chairperson of the sixteenth meeting of chairpersons and be circulated to all chairpersons for comments.**

Q. **The chairpersons decided that the fourth inter-committee meeting would be convened for three days with the seventeenth meeting of chairpersons being convened for two days.**

Annex

Report of the third inter-committee meeting of human rights treaty bodies

(Geneva, 21 and 22 June 2004)

I. Introduction

1. The third inter-committee meeting of the human rights treaty bodies was held at the Office of the High Commissioner for Human Rights (OHCHR) in Geneva on 21 and 22 June 2004, pursuant to the recommendation of the fifteenth meeting of the chairperson of the human rights treaty bodies that the inter-committee meeting should be convened annually, immediately prior to the annual meeting of chairpersons (A/58/350, para. 50).

2. The following members of human rights treaty bodies attended the meeting: Human Rights Committee (HRC): Mr. Abdelfattah Amor (Chairperson), Mr. Rafael Rivas Posada, Mr. Maxwell Yalden; Committee on Economic, Social and Cultural Rights (CESCR): Ms. Virginia Bonoan-Dandan (Chairperson), Ms. Maria Virginia Bras Gomes, Mr. Eibe Riedel; Committee on the Rights of the Child (CRC): Mr. Jakob Egbert Doek (Chairperson); Mr. Kamel Filali, Ms. Nevena Vuckovic-Sahovic; Committee on the Elimination of Discrimination against Women (CEDAW): Ms. Feride Acar (Chairperson), Mr. Cees Flinterman; Committee on the Elimination of Racial Discrimination (CERD): Mr. Mario Jorge Yutzis (Chairperson), Mr. Alexei S. Avtonomov, Ms. Patricia N. January-Bardill; Committee against Torture (CAT): Mr. Fernando Mariño Menendez (Chairperson), Mr. Sayed El Masry, Mr. Ole Vedel Rasmussen; Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW): Mr. Prasad Kariyawasam (Chairperson), Mr. Francisco Carrión-Mena, Mr. Arthur Gakwandi.

II. Opening of the meeting and election of officers

3. The meeting was opened by Mr. Bertrand Ramcharan, Acting United Nations High Commissioner for Human Rights, who welcomed all members, including representatives of the new treaty body, CMW, and observers from the African Commission on Human and Peoples' Rights whose presence would set the framework for close and fruitful collaboration between the African and international systems for the protection and promotion of human rights. The Acting High Commissioner reminded the participants of the strategic importance of the international human rights treaties and stressed the mutually reinforcing nature of each organ, as well as the importance of the treaty bodies' interaction with other parts of the United Nations system, including the specialized agencies, the Commission on Human Rights and the Security Council's Counter-Terrorism Committee. Further harmonization of working methods of treaty bodies during the year, in particular with regard to list of issues and follow-up procedures, was welcomed. The Secretariat's efforts to strengthen the implementation of the concluding observations at the national level, including by reinforcing the capacity of national actors, were underlined. In this context, the global review of the OHCHR technical cooperation programme and the key role of treaty body recommendations

in the discussions were mentioned. The Acting High Commissioner reiterated the commitment of OHCHR to maintain a high standard of servicing for the treaty bodies and drew attention to the draft harmonized reporting guidelines presented for discussion to the inter-committee meeting, which were the result of a year-long effort and wide consultations by the Secretariat. The draft guidelines emphasized the role of the reporting process in providing a framework for national-level stocktaking, popular participation and constructive public scrutiny of implementation; they built upon the guidelines for the current core document but went further, calling for information concerning substantive provisions which were common to all or several treaties.

4. Mr. Kariyawasam was elected Chairperson-Rapporteur. Mr. Mariño was elected Vice-Chairperson. At the opening meeting, the participants adopted the agenda and programme of work (HRI/ICM/2004/1).

III. Strengthening the human rights treaty body system: harmonization of working methods and follow-up to the recommendations of the second inter-committee meeting and the fifteenth meeting of chairpersons

5. Mr. Doek, Chairperson of the second inter-committee meeting and the fifteenth meeting of chairpersons, commented on the report on the implementation of the recommendations of the second inter-committee meeting and of the fifteenth meeting of chairpersons (HRI/MC/2004/2). He noted with satisfaction the number of recommendations that had been implemented, including the adoption of lists of issues and the convening of pre-sessional working groups by most treaty bodies. In light of the progress achieved in the implementation of the recommendations of the second inter-committee meeting and the fifteenth meeting of chairpersons, the value of those meetings, and particularly the inter-committee meeting, was underlined and further opportunities to dialogue informally with the specialized agencies, States parties and other actors on strengthening the human rights treaty body system were encouraged.

6. Some participants considered that a number of previous recommendations had not been implemented and should remain on the agenda for the next meeting in 2005. The need for consistent policies and coordinated approaches was recognized, but the emphasis should not be on uniformity of working methods, but harmonization where it was necessary to improve efficiency and reduce contradictory practices.

List of issues and pre-sessional working groups

7. It was agreed that all committees should adopt lists of issues with regard to all reports of States parties. Members of CAT, which had used lists of issues for the first time at its session in May 2004, noted that this had been welcomed by States parties and, despite some challenges, the Committee intended to continue with the practice. Members of CEDAW indicated that the Committee planned to adopt list of issues for all reports and not only for periodic reports, as had been the case. Some participants highlighted the need for an agreed structure for lists of issues, which should incorporate updated statistical information, new developments since the

submission of the previous report and specific questions on matters of particular concern. These lists should be used to frame the constructive dialogue with the State party during the session, implying that the questions should be specific and non-adversarial. The Secretariat should assist with processing complex statistical information. Lists of issues should also systematically request information on steps taken to implement the last set of concluding observations of the relevant committee, where this information had not been included in the State party's report. Some discussions took place on whether answers to lists of issues should be written, when these answers should be submitted, whether they should be translated, whether they should be subject to page limitations, the procedure to be followed when States parties did not respond, and the status of information received from NGOs. There was also some discussion on the linkage between concluding observations, lists of issues, country task forces and the follow-up procedures being introduced by some committees.

Cooperation with the Commission on Human Rights and the Sub-Commission on the Promotion and Protection of Human Rights

8. In light of the experience of the chairpersons at the sixtieth session of the Commission, the participants considered how their interaction with the Commission could be enhanced and again suggested that they should be able to engage in an interactive dialogue with the Commission and that a proper amount of time be allocated to ensure meaningful interaction. Participants also emphasized the importance of collaboration with the Sub-Commission.

Cooperation with the specialized agencies and other United Nations bodies

9. Participants placed a high value on input by specialized agencies, especially where information provided was country specific. Ways to encourage greater participation by representatives of the specialized agencies at the sessions of the treaty bodies were discussed. The practice of nominating a focal point from among the members of each treaty body to liaise with the specialized agencies was noted, but it was emphasized that the liaison's role should be clear.

Cooperation with special procedure mandate-holders

10. Cooperation with special procedures was considered to enhance the work of the treaty bodies, and it was recommended that funds be secured to facilitate a real dialogue between the special procedures and the treaty bodies during sessions of treaty bodies, and that a mechanism be created to ensure the systematic exchange of written information between the treaty bodies and special procedures.

Press releases

11. Although increased collaboration by the Department of Public Information was noted, difficulties with some press releases remained and ways of ensuring the accuracy of press releases were discussed. The press releases should bear a disclaimer indicating that they were not an official record.

Role of national human rights institutions

12. In light of the important role played by national human rights institutions (NHRIs) in encouraging States to report, as well as in monitoring the

implementation of concluding observations, the establishment of well-functioning and independent NHRIs was encouraged. In order to enhance the participation of NHRIs in the treaty body system, it was suggested that during the next inter-committee meeting, representatives of NHRIs from different countries be invited to make a presentation on their best practices with respect to the treaty body system.

Capacity-building and technical assistance

13. Participants noted that, although technical assistance should be provided, as far as possible, to States committed to preparing their reports, it should also be available to strengthen their capacities to implement the various human rights treaties. Capacity-building should also focus on the establishment of a structure within the State system to coordinate, evaluate and monitor legislation and programmes relating to the national implementation of human rights treaties.

Mutual exchange of information with respect to general comments/recommendations

14. The meeting welcomed instances of information-sharing, including consultations among committees in the preparation of general comments/ recommendations. Collaboration could be further enhanced by establishing and each committee sharing their long-term programmes of work for the preparation of general comments.

Working methods

15. It was proposed to extend to all committees the practice adopted by some treaty bodies of including in their annual or session reports an overview of their working methods. It was further recommended that the Secretariat should provide updated information on the working methods of each treaty body.

Follow-up

16. Participants reaffirmed the recommendation of the second inter-committee meeting that all treaty bodies should consider introducing procedures to follow up their concluding observations or recommendations. Several committees had taken steps to introduce such procedures in the light of the procedures adopted by HRC. However, representatives of CEDAW and CRC explained that they had considered the matter and had decided, for the moment, not to introduce such procedures owing to their heavy workloads resulting from the backlog of States parties' reports awaiting review and other responsibilities. The organization (during 2003 and 2004) of workshops on follow-up to recommendations in treaty bodies' concluding observations was welcomed.

Non-reporting

17. The existing procedure, introduced by most treaty bodies, whereby the State party's implementation of a particular human rights treaty was considered in the absence of a report, was recognized as a useful tool to address non-reporting. In many cases, it provided sufficient motivation for the State in question to produce a report. Other solutions were explored with a view to reducing the number of States that did not report or that did so with considerable delay. The point was made that States that reported appeared to be at a disadvantage in comparison to non-reporting

States, because the former had to face public questioning by the treaty bodies regarding implementation of their obligations. Ways to ensure that reporting and non-reporting States both took on public accountability and to draw attention to the reporting practices of States parties were also discussed.

Reservations

18. It was agreed that it was appropriate for treaty bodies to request the withdrawal of reservations to the treaties they monitored. The question of whether the treaty bodies could decide on the admissibility of reservations made by States (and the legality of their provisions) was discussed. Participants stressed that although not all treaty bodies were confronted with this issue, it would be useful to adopt a common approach. It was proposed that the Secretariat should prepare a report (including a table showing all reservations made to the core human rights treaties and the nature of the provisions covered) with a view to establishing a working group, consisting of a representative of each committee, to consider this report and report to the next inter-committee meeting.

IV. Strengthening the human rights treaty body system: streamlining of reporting requirements

19. The meeting considered the report of the Secretariat presenting proposed guidelines on an expanded core document and treaty-specific targeted reports as well as harmonized guidelines for reporting to all treaty bodies (HRI/MC/2004/3), which had been requested by the second inter-committee meeting and fifteenth meeting of chairpersons. The Secretariat introduced the document, which had been produced as part of a collaborative effort involving members of the treaty bodies, States parties, parts of the United Nations system, NGOs and other parts of civil society, OHCHR — in particular its Treaties and Commission Branch — and the Division for the Advancement of Women as the secretariat of CEDAW. The proposed change of name of the "expanded core document" to "common core document" was intended to reinforce the linkage between the two documents which would be submitted in tandem to each treaty body, i.e. the common core document and the treaty-specific document.

Facilitating reporting by States

20. Participants agreed that the revised proposed reporting system should facilitate reporting, as well as implementation of States' substantive treaty obligations. It would not become clear whether the addition of congruent provisions to the common core document would achieve this aim until States began to test the format. The paragraphs relating to the establishment of an appropriate institutional framework for the preparation of reports (HRI/MC/2004/3, annex, paras. 12-15) were emphasized, as was the link between reporting and the monitoring of implementation of the treaties at the national level. The common core document could provide a tool in the overall attempt to make reporting more efficient and effective, but States parties needed to take their treaty obligations seriously, including their reporting obligations.

21. Among the diverse views expressed by participants was the concern that the guidelines might discourage States parties, both large and small, from reporting. It

was emphasized that States should be assisted to ensure that they had the capacity to report and that reporting requirements should not provide an excuse for not reporting and should not deter ratification of treaties.

Content of common core document and treaty-specific document

22. The basic structure and content of the proposed common core document were approved in principle, although further work on the draft was required and comments from treaty bodies should be sought. Some participants suggested additional requirements, including the disaggregation of data by age and the inclusion of the outcomes of special sessions of the General Assembly following up on specific world conferences. Should the concept of the common core document and treaty-specific document be agreed by the committees, an appropriate balance needed to be struck between the two documents to ensure that the reporting remained focused on the treaties rather than on the common core document.

23. A number of areas were identified as requiring further work. Information on the practical implementation of the human rights treaties, including examples, should be provided, rather than indicating whether the treaties were directly applicable, as should information on the laws regulating civil society, including NGOs, and the restrictions imposed on their activities. Participants suggested that additional provisions could usefully be included in the guidelines for the common core document that would require reporting on congruent provisions of the treaties. It was also suggested that further review and contributions from members of all committees were needed. The imposition of page limits and the approach to poorly presented reports were particular concerns. The inclusion of lists of treaties, world conferences and statistical information was welcomed as a useful guide for States, but also for other interested parties. Such lists should not be seen as exhaustive. The link between human rights and the Millennium Development Goals was seen as important. The chart of congruence (ibid., p. 9), although only intended as an indication of where congruence might lie, also required further work. It was suggested that all committees should standardize their technical terminology.

Testing the proposal

24. With the approval of the committees, it was agreed that testing the proposal through the preparation of a report based on the proposed guidelines would be important to gauge its efficacy and identify areas requiring further refinement.

Technical assistance and capacity-building

25. The provision of technical assistance to States was essential to ensure their capacity to fulfil reporting obligations. Capacity to report was closely linked to the capacity to implement the provisions of the treaties themselves. It was also important to ensure that the Secretariat had the necessary resources and capacity to provide technical assistance, in particular with regard to the proposed draft guidelines.

V. Dialogue with non-governmental organizations

26. The representatives of the following NGOs were present during the dialogue: Amnesty International, Association for the prevention of torture, Centre on Housing

Rights and Evictions, Human Rights Watch, International Catholic Migration Commission, International Commission of Jurists, International Federation of Human Rights Leagues, International Service for Human Rights, International Women's Rights Action Watch-Asia Pacific, People's Health Movement, Quaker United Nations Office and World Organization against Torture.

27. NGOs welcomed the invitation extended by the meeting to discuss the matters of mutual concern, and participants thanked NGOs for their valuable contributions to the work of treaty bodies and the promotion of national implementation of the human rights treaties. Several NGOs highlighted the impact on human rights of counter-terrorism measures, which they considered should be an important concern for all treaty bodies. They also recommended that the treaty bodies collaborate further with the Counter-Terrorism Committee.

28. The rights of women in prison and the rights of their children, human rights violations relating to sexual orientation, housing rights and violence against women were also raised as issues requiring further attention. There was also a need for wider adherence to CMW.

29. A number of NGOs addressed the working methods of the committees and the draft guidelines for an expanded core document and treaty-specific targeted report (HRI/MC/2004/3). Several raised concerns about the approach outlined in the report, whereas others welcomed the process of its formulation and looked forward to its further refinement and their involvement in that process.

30. The issue of non-reporting required further analysis and action on the part of the treaty bodies. States should not see the common core document and the treaty-specific report as excusing them from fulfilling their reporting obligations. Treaty bodies that did not have follow-up procedures were urged to consider adopting them. NGOs also requested that the scheduling of the examination of States parties' reports occur well before the sessions at which they would be considered in order to allow them to plan their work, in particular with respect to the preparation of shadow reports. Treaty bodies were also invited to schedule the briefings with NGOs during sessions, so as to allow for a better dialogue and for interpreters to be obtained.

VI. Points of agreement of the third inter-committee meeting to be transmitted to the sixteenth meeting of chairpersons

Mandate of the Chairperson

I. **The third inter-committee meeting recommended that the Chairperson of the current inter-committee meeting should coordinate implementation of the present recommendations together with the chairpersons of the other treaty bodies and report on their implementation at the beginning of the next inter-committee meeting, before the election of the chairperson of that meeting.**

Inter-committee meeting

II. **The third inter-committee meeting noted that the convening of the inter-committee meeting had been generally welcomed and recommended that**

such meetings be convened on an annual basis. It also underlined the value of informal meetings of treaty bodies to discuss matters of mutual concern and recommended that such meetings be convened regularly.

Reporting guidelines

III. **The third inter-committee meeting recommended that the Chairpersons forward the draft guidelines on an expanded core document and treaty-specific targeted reports (HRI/MC/2004/3) and the report of the inter-committee meeting to their respective committees for discussion as a priority item of their agenda.**

IV. **The third inter-committee meeting recommended the establishment of a mechanism for further consultations between the committees on the draft proposed guidelines and other matters relating to the harmonization of their reporting guidelines during the coming year. The meeting decided to entrust this task to Mr. Kamel Filali as rapporteur.**

V. **Bearing in mind the importance and complexity of the proposed guidelines, the third inter-committee meeting requested OHCHR, in consultation with the Division for the Advancement of Women, to continue to work on the draft proposed guidelines, incorporating the comments and suggestions made by each committee during the course of the year, as well as those received from NGOs, NHRIs and States parties, with a view to producing revised guidelines for consideration, if possible at the fourth inter-committee meeting, in 2005.**

States parties wishing to report using the draft guidelines

VI. **The third inter-committee meeting generally agreed that any States parties wishing to prepare reports using the draft guidelines should be entitled to do so and encouraged them to seek technical assistance from OHCHR and the Division for the Advancement of Women, which were requested to provide technical assistance to States engaged in this process.**

Working methods

VII. **The third inter-committee meeting recommended that each committee should include in its agenda for each session a specific item on working methods if it had not already done so. The secretariat of each committee was requested to produce a document detailing its working methods for inclusion in its annual report, or issued as a separate document.**

VIII. **The third inter-committee meeting requested OHCHR, in collaboration with the Division for the Advancement of Women, to produce a comparative report on the working methods of all committees, to be updated on a regular basis.**

IX. **The third inter-committee meeting recommended that OHCHR, in collaboration with the Division for the Advancement of Women, submit a proposal to the fourth inter-committee meeting on the standardization of terminology used by treaty bodies relating to the technical elements of their work.**

List of issues

X. **The third inter-committee meeting recommended that each committee, if it had not already done so, consider adopting the practice of producing a list of issues and questions to be submitted to States parties before the session at which the respective State party's report is to be considered by the Committee.**

Reference to concluding observations

XI. **The third inter-committee meeting recommended that States parties should specifically address the steps taken to implement the Committee's concluding observations/recommendations in their periodic reports. Where this information is not included, it was recommended that committees request it in their list of issues for the State party.**

Follow-up

XII. **The third inter-committee meeting recommended that each committee continue to consider adopting procedures to ensure effective follow-up to their concluding observations, taking into account the procedures that are already being implemented and their respective workloads.**

Liaison with specialized agencies and United Nations programmes and funds

XIII. **The third inter-committee meeting recommended that each committee consider appointing a focal point to liaise with specialized agencies and other bodies of the United Nations system to encourage their participation in its work. In particular, the committees should encourage United Nations bodies to provide country-specific input relating to the human rights situation in the State party under consideration.**

National human rights institutions

XIV. **The third inter-committee meeting recommended that all committees strongly support the work of national human rights institutions and, where they did not exist, call on States to create them in accordance with the Paris Principles. The meeting encouraged national human rights institutions to participate in treaty body sessions, including by providing input to the work of the pre-sessional working groups, while maintaining their independence. National human rights institutions were also encouraged to play a role in providing early warning of cases of human rights violations and in following up on treaty body recommendations. The meeting recommended that a number of NHRIs be invited to the next inter-committee meeting.**

Non-reporting

XV. **The third inter-committee meeting recommended that the Secretariat produce a comprehensive report highlighting the situation with regard to non-reporting by States parties and reports that are overdue.**

Reservations

XVI. **The third inter-committee meeting recommended that the Secretariat prepare a report, including a table showing all reservations made to the core human rights treaties and the nature of the provisions covered, with a view to establishing a working group consisting of a representative of each committee to consider this report and to report to the next inter-committee meeting.**

Statistical information relating to human rights implementation

XVII. **The third inter-committee meeting requested the Secretariat to provide assistance to the treaty bodies in analysing statistical information relating to human rights presented in States parties' reports, replies to lists of issues and core documents.**

Interactive dialogue with the Commission on Human Rights

XVIII. **The third inter-committee meeting reiterated the recommendation of the second inter-committee meeting that the Commission on Human Rights set aside appropriate time for an interactive dialogue with the chairpersons of human rights treaty bodies during its annual session.**

Cooperation with special procedures mandate-holders

XIX. **The third inter-committee meeting recommended that funds be made available to support the interaction of special procedures mandate-holders with the treaty bodies, including through attendance at sessions of treaty bodies.**

Press releases

XX. **The third inter-committee meeting recommended that committees establish a liaison point with the Department of Public Information to ensure the accuracy of press releases.**

XXI. **The third inter-committee meeting recommended that the press releases of each committee should include a disclaimer stating, "This press release is not an official record and is provided for public information only".**

Technical assistance and capacity-building

XXII. **The third inter-committee meeting recommended that technical assistance be provided to States, at their request, to enhance their capacity to meet their reporting obligations.**

Recommendations of the second inter-committee meeting

XXIII. **The third inter-committee meeting recalled the recommendations of the second inter-committee meeting and recommended that each committee continue to seek to implement those recommendations that remained outstanding.**

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Item 107 (b) of the provisional agenda*
Human rights questions: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

The right to development

Report of the Secretary-General

Summary

The present report contains information supplementing the report of the United Nations High Commissioner for Human Rights on the right to development, submitted to the Commission on Human Rights at its sixtieth session.

The Working Group on the Right to Development held its fifth session in Geneva in February 2004. The Office of the High Commissioner convened, within the context of the session, a high-level seminar on the theme "Global partnership for development". The Commission on Human Rights endorsed the conclusions and recommendations of the Working Group, among which was the establishment, for a one-year period, of a high-level task force on the implementation of the right to development. The Office is currently assisting the Chair of the Working Group in the establishment of the task force.

In response to the request addressed by the Commission to the Subcommission for the Promotion and Protection on Human Rights to prepare a concept paper proposing options for the implementation of the right to development, the Office commissioned five studies for consideration by the Subcommission at its fifty-sixth session.

* A/59/150.

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I. Introduction

1. In its resolution 58/172 of 22 December 2003, the General Assembly requested the Secretary-General to bring the resolution to the attention of Member States, United Nations organs and bodies, specialized agencies, funds and programmes, international development and financial institutions, in particular the Bretton Woods institutions and non-governmental organizations, and to submit a report to the Assembly at its fifty-ninth session and an interim report to the Commission on Human Rights at its sixtieth session on the implementation of the resolution, including efforts undertaken at the national, regional and international levels in the promotion and realization of the right to development.

2. In response to this request, the Secretary-General disseminated the resolution and, in a note submitted to the Commission on Human Rights at its sixtieth session (E/CN.4/2004/116), drew attention to document E/CN.4/2004/22, containing the annual report prepared by the United Nations High Commissioner for Human Rights in response to a request made by the Commission in resolution 1998/72 of 22 April 1998.

3. In that resolution the Commission had invited the High Commissioner to submit a report to the Commission each year, and to provide interim reports to the open-ended Working Group on the Right to Development, in each case covering:

> "(a) The activities of [the] Office relating to the implementation of the right to development as contained in [the High Commissioner's] mandate;
>
> "(b) The implementation of resolutions of the Commission on Human Rights and the General Assembly with regard to the right to development;
>
> "(c) Inter-agency coordination within the United Nations system for the implementation of relevant resolutions of the Commission in that regard."

4. The present report contains updated information that complements that contained in the aforementioned report of the High Commissioner.

II. Updated information complementing the report of the High Commissioner for Human Rights on the right to development (E/CN.4/2004/22)

5. The Commission on Human Rights, in its resolution 2003/83 of 25 April 2003, requested the Subcommission on the Promotion and Protection of Human Rights to prepare a concept document establishing options for the implementation of the right to development and their feasibility, inter alia, an international legal standard of a binding nature, guidelines on the implementation of the right to development and principles for development partnership, based on the Declaration on the Right to Development, including issues which any such instrument might address, for submission to the Commission at its sixty-first session for its consideration and determination of the feasibility of those options.

6. In the same resolution, the Commission requested the High Commissioner to convene a two-day high-level seminar immediately prior to the next session of the Working Group on the Right to Development and within its 10 working days, inviting all the relevant actors from the human rights, trade, financial and

development fields to review and identify effective strategies for mainstreaming the right to development in the policies and operational activities of the major international organizations/institutions, and as a contribution to the work of the Subcommission on the proposed concept document.

7. The Office of the High Commissioner for Human Rights organized in Geneva, on 9 and 10 February 2004, the high-level seminar on the theme "Global partnership for development". The seminar addressed the following: (a) the contribution of United Nations agencies and programmes to the right to development; (b) country experiences in operationalizing the right to development; (c) partnerships for development; (d) international trade and development; and (e) national perspectives on the right to development. The seminar was chaired by Adebayo Adedeji (Nigeria) and participants included experts in the fields of human rights, trade and development, the independent expert of the Commission on Human Rights on the right to development, the member of the Subcommission entrusted with the mandate to prepare a working paper identifying and analysing possible alternatives that would enable the Subcommission to respond fully and as effectively as possible to the above-mentioned request of the Commission, representatives of Member States, representatives of United Nations agencies and programmes and international financial, trade and development organizations, and representatives of non-governmental organizations. At the seminar, presentations by the invited speakers were followed by an interactive discussion.

8. The Office prepared an information note (HR/GVA/SEM/RTD/2004/2), in which the following questions were identified as the focus of the seminar: (a) "What are the functional partnerships at the global, regional and national levels for the implementation of the right to development?"; (b) "How can the potential of these partnerships be better exploited?"; (c) "What are the means and methods of harmonizing the scope and activities of these partnerships, with a view to building a coherent, transparent and efficient environment for development?"; and (d) "Is it possible to implement and realize the right to development without development partnership and cooperation?". The report on the high-level seminar on the right to development is contained in document E/CN.4/2004/23/Add.1.

9. The Commission on Human Rights, in its resolution 2004/7 of 13 April 2004, endorsed the conclusions and recommendations adopted by the Working Group on the Right to Development at its fifth session as reflected in its report (E/CN.4/2004/23 and Corr.1, paras. 41-51) and called for their immediate, full and effective implementation by the Office of the High Commissioner and other relevant actors. In this regard, the Office is currently providing support to the Chair of the Working Group in the implementation of the decision by the Group to establish a high-level task force for a period of one year with a view to helping it to fulfil the mandate assigned to it in paragraph 10 (*a*) of Commission resolution 1998/72.

10. It is anticipated that the task force would comprise high-level representatives from the identified trade, finance and development institutions and organizations, as well as five experts from diverse backgrounds with practical experience related to the implementation of the right to development. For its first report, the task force would analyse and prepare recommendations on the following issues, which reflect both national and international perspectives: (a) obstacles and challenges to the achievement of the Millennium Development Goals in relation to the right to development; (b) social impact assessments in the areas of trade and development at

the national and international levels; and (c) best practice in the implementation of the right to development (see E/CN.4/2004/23 and Corr.1, para. 49). The issue of best practice will be considered within the scope of the other two mandated themes so as to focus the discussions and analyses undertaken by the task force. The first meeting of the task force is scheduled to be held in Geneva from 6 to 10 December 2004.

11. Pursuant to the request addressed to the Subcommission to prepare a concept paper, the Office of the High Commissioner commissioned the preparation of the following five studies for consideration by the Subcommission: (a) "Study on policies for development in a globalizing world: what can the human rights approach contribute?" (E/CN.4/Sub.2/2004/18); (b) "Towards a human rights approach to development: concepts and implications" (E/CN.4/Sub.2/2004/19); (c) "The right to development: study on existing bilateral and multilateral programmes and policies for development partnership" (issued as a conference room paper); (d) "Mainstreaming the right to development into international trade law and policy at the World Trade Organization" (E/CN.4/Sub.2/2004/17); and (e) "The legal nature of the right to development and enhancement of its binding nature" (E/CN.4/Sub.2/2004/16).

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Human rights questions: human rights situations and reports of special rapporteurs and representatives

Question of the violation of human rights in the occupied Arab territories, including Palestine

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly the interim report on violations of international humanitarian law and human rights in the Palestinian territories occupied since 1967, submitted by John Dugard, Special Rapporteur, pursuant to Commission on Human Rights resolutions 1993/2, section A, and 2004/10.

* A/59/150.

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Report of the Special Rapporteur of the Commission on Human Rights on the situation of human rights in the Palestinian territories occupied by Israel since 1967

Summary

The present report focuses upon the consequences of military incursions into the Gaza Strip, the violations of human rights and humanitarian law arising from the construction of the Wall and the pervasiveness of restrictions on freedom of movement.

In the past six months, the Israel Defence Forces (IDF) have carried out intensified military incursions into the Gaza Strip. This has been interpreted as a show of force on the part of Israel so that it cannot later be said that it had withdrawn unilaterally from the territory in weakness. In the course of these incursions, Israel has engaged in a massive and wanton destruction of property. Bulldozers have destroyed homes in a purposeless manner and have savagely dug up roads, including electricity, sewage and water lines. In Operation Rainbow, from 18 to 24 May 2004, 43 persons were killed and a total of 167 buildings were destroyed or rendered uninhabitable. These buildings housed 379 families (2,066 individuals). These demolitions occurred during one of the worst months in Rafah's recent history. During May, 298 buildings, housing 710 families (3,800 individuals), were demolished.

Israel has announced that it will withdraw unilaterally from Gaza. Israel intends to portray this as the end of the military occupation of Gaza, with the result that it will no longer be subject to the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949 (Fourth Geneva Convention) in respect of Gaza. In reality, however, Israel does not plan to relinquish its grasp on the Gaza Strip. It plans to retain ultimate control over Gaza by controlling its borders, territorial sea and airspace. Consequently, it will in law remain an Occupying Power still subject to obligations under the Fourth Geneva Convention.

The Wall that Israel is presently constructing within the Palestinian territory was held to be contrary to international law by the International Court of Justice on 9 July 2004. The Court held that Israel is under an obligation to discontinue building the Wall and to dismantle it forthwith. In its Advisory Opinion, the Court dismissed a number of legal arguments raised by Israel relating to the applicability of humanitarian law and human rights law. In particular, it held that settlements are unlawful. A week before the International Court of Justice gave its Advisory Opinion, the High Court of Israel gave a ruling on a 40-kilometre strip of the Wall in which it held that, while Israel as the Occupying Power had the right to construct the Wall to ensure security, substantial sections of the Wall imposed undue hardships on Palestinians and had to be re-routed.

Israel has announced that it will not comply with the Advisory Opinion of the International Court of Justice. It has indicated that it will abide by the ruling of its own High Court in respect of sections of the Wall still to be built but not in respect of completed sections of the Wall.

Israel claims that the purpose of the Wall is to secure Israel from terrorist attacks and claims that terrorist attacks inside Israel have dropped by over 80 per

cent as a result of the construction of the Wall. Two comments may be made on Israel's claims. First, there is no compelling evidence that suicide bombers could not have been as effectively prevented from entering Israel if the Wall had been built along the Green Line (the accepted border between Israel and Palestine) or within the Israeli side of the Green Line. Second, the evidence suggests that the following are more convincing explanations for the construction of the Wall:

- The incorporation of settlers within Israel;
- The confiscation of Palestinian land;
- The encouragement to Palestinians to leave their lands and homes by making life intolerable for them.

The course of the Wall indicates clearly that its purpose is to incorporate as many settlers as possible into Israel. This is borne out by the fact that some 80 per cent of settlers in the West Bank will be included on the Israeli side of the Wall. Furthermore, Benjamin Netanyahu, Minister of Finance of Israel and a former Prime Minister, openly acknowledged in the *International Herald Tribune* on 14 July 2004 that the purpose of the Wall was to include "as many Jews as possible".

Despite the fact that the International Court of Justice has unanimously held that settlements are unlawful, settlement expansion has substantially increased in the past year as has settler violence towards Palestinians. To aggravate matters, Israel is now proceeding with plans to incorporate the settlement of Ariel, 22 kilometres inside Palestinian territory. This action is prohibited by the International Court of Justice and cannot be reconciled with the decision of the Israeli High Court itself.

A further purpose of the Wall is to expand Israel's territory. Rich agricultural land and water resources have been seized along the Green Line and incorporated into Israel. This land seizure has been documented in earlier reports and in the Advisory Opinion of the International Court of Justice. In recent months, Israel has manifested its territorial ambitions in the Jerusalem area. The Wall is currently being built around an expanded East Jerusalem to incorporate some 247,000 settlers in 12 settlements and some 249,000 Palestinians within the Wall. It must be recalled that Israel's 1980 annexation of East Jerusalem is unlawful and has been declared "of no legal validity" by a resolution of the Security Council.

The seizure of land in East Jerusalem makes no sense from a security perspective because in many instances it will divide Palestinian communities. Moreover, it will have serious implications for Palestinians living in and near to East Jerusalem. First, it threatens to deprive some 60,000 Palestinians with Jerusalem residence rights of such rights if they happen to find themselves on the West Bank side of the Wall. Secondly, it will make contact between Palestinians and Palestinian institutions situated on different sides of the Wall hazardous and complicated. Thirdly, it will prohibit over 100,000 Palestinians in neighbourhoods in the West Bank who are dependent upon the facilities of East Jerusalem, including hospitals, universities, schools, employment and markets for agricultural goods, from entering East Jerusalem.

A third purpose of the Wall is to compel Palestinian residents living between the Wall and the Green Line and adjacent to the Wall, but separated from their land by the Wall, to leave their homes and start a new life elsewhere in the West Bank by making life intolerable for them. Restrictions on freedom of movement in the

"Closed Zone" between the Wall and the Green Line and the separation of farmers from their land will be principally responsible for forcing Palestinians to move. The Israeli High Court declared that certain sections of the Wall might not be built where they caused substantial hardship to Palestinians. Logically, this ruling is applicable to sections of the Wall that have already been built. However, the Government of Israel has indicated that it will not honour its own High Court's ruling in respect of the 200-kilometre stretch of the Wall that has already been built.

Freedom of movement is severely curtailed in the West Bank and Gaza. The inhabitants of Gaza are effectively imprisoned by a combination of wall, fence and sea. Moreover, within Gaza freedom of movement is severely restricted by roadblocks which effectively divide the small territory. The inhabitants of the West Bank are subjected to a system of curfews and checkpoints that deny freedom of movement. West Bankers need permits to travel from one city to another. Permits are arbitrarily withheld and seldom granted for private vehicles. Several hundred military checkpoints control the lives of Palestinians. The Wall in the Jerusalem area threatens to become a nightmare as tens of thousands of Palestinians will be required to cross at one checkpoint each day — the Kalandiya checkpoint. Finally, as already indicated, a permit system governs the lives of residents between the Wall and the Green Line and those adjacent to the Wall. This permit system is operated in an arbitrary and capricious manner.

The restrictions on freedom of movement imposed by the Israeli authorities on Palestinians resemble the notorious "pass laws" of apartheid South Africa. These pass laws were administered in a humiliating manner, but uniformly. Israel's laws governing freedom of movement are likewise administered in a humiliating manner, but they are characterized by arbitrariness and caprice. In one respect Israel has gone beyond the scope of apartheid law. It has introduced separate roads for settlers. "Road apartheid" was never a feature of the apartheid State.

The International Court of Justice indicated in its Advisory Opinion, which has been approved by the General Assembly, that there are consequences of the Wall for States other than Israel. States are reminded of their obligation not to recognize the illegal situation resulting from the construction of the Wall and not to render aid or assistance in maintaining the situation created by the construction of the Wall. Israel's defiance of international law poses a threat not only to the international legal order but to the international order itself. This is no time for appeasement on the part of the international community.

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I. Introduction

1. On 9 July 2004 the International Court of Justice held that the Wall presently being built by Israel in the Occupied Palestinian Territory (OPT), including in and around East Jerusalem, is contrary to international law. It held that Israel is under an obligation to cease the building of the Wall on Palestinian territory and to dismantle it forthwith. It also held that Israel is under an obligation to make reparation for all damage caused by the construction of the Wall in the OPT. Finally, it held that all States are under an obligation not to recognize the illegal situation resulting from the construction of the Wall; that all States parties to the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949 (Fourth Geneva Convention) are obliged to ensure that Israel complies with the provisions of that Convention; and that the United Nations should consider what further action is required to bring to an end the illegal situation resulting from the construction of the Wall.

2. In its reasoning, the Court dismissed a number of legal arguments raised by Israel which have been fundamental to Israeli foreign policy in respect of the OPT. It found that the Fourth Geneva Convention is applicable to the OPT and that Israel is obliged to comply with its provisions in its conduct in the Territory. In making this finding, it stressed that according to article 49 (6) of the Fourth Geneva Convention, Israeli settlements in the OPT "have been established in breach of international law". The Court also found that the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of the Child are binding on Israel in respect of its actions in the OPT. It moreover emphasized that the Wall "severely impedes the exercise by the Palestinian people of its right to self-determination". Finally, the Court was sceptical about Israel's reliance on a state of necessity to justify the construction of the Wall and held that Israel "cannot rely on a right of self-defence or on a state of necessity in order to preclude the wrongfulness of the construction of the Wall".

3. Shortly before the International Court of Justice gave its opinion, the High Court of Justice of Israel gave a ruling on a portion of the Wall. Although the Court accepted that Israel as the occupying Power had the right to construct the Wall to ensure security, it held that certain sections of the Wall imposed undue hardships on Palestinians and had to be re-routed. This Court looked at the Wall largely from the perspective of proportionality, and asked the question whether the Wall's route injured local inhabitants to the extent that there was no proportion between the injury suffered and the security benefit of the Wall. The Court found that some sections of the proposed route caused disproportionate suffering to Palestinian villages as they separated villagers from the agricultural lands upon which their livelihood depended.

4. The unlawfulness of the Wall is now clear under international law as expounded by the International Court of Justice. Moreover, large portions of the Wall would seem to qualify for unlawfulness under Israeli law as pronounced by the Israeli High Court. The Israeli argument that security considerations provide it with an absolute right to build the Wall in Palestinian territory can no longer stand. Terrorism is a serious threat to Israeli society and it may well be that the Wall prevents suicide bombers from reaching Israel. If this is the case, however, there is no reason why the Wall should not be routed along the Green Line or on the Israeli

side of the Green Line. On the relationship between terrorism and the law, one can do no better than refer to the statement of the Israeli High Court:

> "We are aware of the killing and destruction wrought by terror against the State and its citizens. As any other Israelis, we too recognize the need to defend the country and its citizens against the wounds inflicted by terror. We are aware that in the short term, this judgement will not make the State's struggle against those rising up against it easier. But we are judges. When we sit in judgement, we are subject to judgement. We act according to our best conscience and understanding. Regarding the State's struggle against the terror that rises up against it, we are convinced that at the end of the day, a struggle according to the law will strengthen her power and her spirit. There is no security without law." (See *Beit Sourik Village Council vs. the Government of Israel* (High Court of Justice 2056/04, para. 86).)

5. In previous reports, the Special Rapporteur has asserted legal positions in the face of Israeli objections. It is no longer necessary to engage in this exercise. The law is clear and it is now possible to focus on the consequences of Israel's illegal actions and to consider ways and means of enforcing compliance with the law. The latter function falls to the United Nations, acting through both the General Assembly and the Security Council, and to individual States. This report will therefore focus upon Israel's actions and the consequences of these actions.

II. Focus of the present report

6. The Special Rapporteur visited the OPT from 18 to 25 June 2004. He visited both Gaza (including Rafah) and the West Bank (Jerusalem, Ramallah, Bethlehem, Qalqiliya and surrounding villages, and Hebron and its vicinity). The focus of his attention was upon the consequences of military incursions into the Gaza Strip, the violations of human rights and humanitarian law arising from the construction of the Wall and the pervasiveness of the restrictions on freedom of movement. The present report reflects these concerns. However, the Special Rapporteur wishes to stress that there are many other violations of human rights in the OPT which continue to destroy the fabric of Palestinian society:

- Deaths and injuries. Since September 2000, over 3,000 Palestinians (including over 500 children) and almost 1,000 Israelis have been killed. More than 34,300 Palestinians and 6,000 Israelis have been injured. Most of those killed or injured were civilians;

- Assassinations. Israel continues to assassinate persons suspected of being militants. These assassinations are generally carried out without regard to loss of civilian life. On the contrary, the loss of civilian lives is simply dismissed as collateral damage. Some 340 persons have been killed in targeted assassinations, of which 188 have been targeted persons and 152 innocent civilians;

- Incursions. In the past year the Israel Defence Forces (IDF) have frequently engaged in military incursions into the West Bank and Gaza with a view to killing Palestinian militants. Frequently civilians are caught up in indiscriminate gunfire. On 28 June, for instance, in the course of an incursion

into Nablus, Dr. Khaled Salah, a lecturer at Najah University, and his 16-year-old son were killed at home — the victims of wanton gunfire by the IDF;

- Prisoners. There are some 6,000 Palestinian prisoners in Israeli prisons or detention camps, of whom 350 are children and 75 are women. Of these prisoners, only some 1,500 have actually been put on trial. Many of those detained report being subjected to torture or inhuman and degrading treatment;

- Curfews. Although there has been a decline in the use of curfews as a weapon by the Israelis in the past year, curfews are still imposed and have been resorted to with great frequency in Nablus;

- Humanitarian crisis. Poverty and unemployment are rampant in the OPT. International Labour Organization (ILO) figures show that an average of 35 per cent of the Palestinian population is unemployed. Sixty-two per cent of Palestinians are below the poverty line. According to a World Bank report of 23 June 2004, "The Palestinian recession is among the worst in modern history. Average personal incomes have declined by more than a third since September 2000."

III. Gaza Strip

7. In recent months the IDF has carried out regular military incursions into the Gaza Strip. The worst-affected towns have been Rafah and Beit Hanoun. The reasons advanced by Israel for these incursions are, in the case of Rafah, the destruction of tunnels used for smuggling of arms and in the case of Beit Hanoun, the destruction of the capacity to launch Qassam rockets into Israel. However, these incursions must be seen in a broader political perspective. Israel has announced that it is planning to withdraw its settlements and military presence from Gaza. It clearly does not wish to be seen to be withdrawing in weakness, with the result that it has chosen to demonstrate its power in Gaza before it withdraws. Also, in order to maintain control over the border between Gaza and Egypt, Israel has decided to create a buffer zone along the "Philadelphi" route, which requires the destruction of homes in Rafah presently in the buffer zone. In June 2004 it was announced that Israel planned to build a moat or trench in this buffer zone.

8. In pursuance of the above policies, Israel has engaged in a massive destruction of property in Gaza. Sometimes property, the homes of suspected militants, has been destroyed for punitive reasons. Sometimes homes have been destroyed for strategic purposes, as in the case of homes along the Philadelphi route. Often, however, the destruction is wanton. Homes have been destroyed in a purely purposeless manner. Bulldozers have savagely dug up roads, including electricity, sewage and water lines, in a brutal display of power. Moreover, there has been a total lack of concern for the people affected. On 12 July 2004, in the course of a raid into Khan Younis, the IDF destroyed a house in which 75-year-old Mahmoud Halfalla, confined to a wheelchair, was present. Despite appeals to allow him to leave, the house was destroyed above him and he was killed.

9. The Special Rapporteur visited Block "O", the Brazil Quarter and the Tel Es Sultan neighbourhood of Rafah in the wake of Operation Rainbow carried out by the IDF in May 2004 and met with families that had been rendered homeless in the exercise. In Operation Rainbow, 43 persons were killed, including 8 who were killed

in a peaceful demonstration on 19 May. From 18 to 24 May, a total of 167 buildings were destroyed or rendered uninhabitable. These buildings housed 379 families (2,066 individuals). These demolitions occurred during one of the worst months in Rafah's recent history. During May, 298 buildings, housing 710 families (3,800 individuals), were demolished in Rafah. Since the start of the intifada in September 2000, 1,497 buildings have been demolished in Rafah, affecting over 15,000 people. The Special Rapporteur was appalled at the evidence of wanton destruction inflicted upon Rafah. The Special Rapporteur is mindful of article 53 of the Fourth Geneva Convention which provides that any destruction by the occupying Power of personal property is prohibited except when such destruction is rendered absolutely necessary by military operations and that failure to comply with this prohibition constitutes a grave breach in terms of article 147 of the Fourth Geneva Convention requiring prosecution of the offenders. The time has come for the international community to identify those responsible for this savage destruction of property and to take the necessary legal action against them.

10. A report published by the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) in June 2004 stated that nearly 45 million United States dollars will be needed to re-house Palestinians rendered homeless by the Israeli army. The Special Rapporteur expresses the hope that the international community will respond positively to the appeal by UNRWA. However, he wishes to emphasize that in terms of the Fourth Geneva Convention, it is the responsibility of the occupying Power to ensure that adequate food and medical supplies are provided for the occupied population and to care for the general welfare of the occupied people. It is a gross violation of the Fourth Geneva Convention for the occupying Power to destroy houses, render the population homeless, create a need for food and medical services and then to refuse to carry out its responsibilities to provide for the concerns of the occupied people.

11. In July 2004 the IDF, accompanied by the customary bulldozers, invaded Beit Hanoun. Militants were killed and so were civilians. Homes were destroyed and by way of further punishment olive and orange trees were destroyed. On 13 July an UNRWA convoy carrying food to Beit Hanoun came under fire from the IDF.

12. The IDF frequently "sweeps" land and houses near settlements and settlement bypass roads, allegedly in the interest of the security of the settlements. The destruction of property in exercises of this kind often seems to exceed the limits of military necessity. The Special Rapporteur had occasion to witness such an excess near a settler bypass road outside Netzarim. Here, the IDF, after years of harassing the families occupying two houses near to a bypass road, piled earth with a bulldozer against the outer walls of the houses up to the height of the first floor. Water and electricity to the house were also cut off and families were ordered not to use first floor rooms facing the bypass road. This is but one example of the kind of military harassment to which Gazans are subjected in order to provide for the security of settlers.

13. The international community has responded positively to Israel's announcement of plans to withdraw unilaterally from Gaza. It has also followed with interest the political conflict within the territory between forces of the Palestinian Authority (PA) and militant groups. There is a danger that events of this kind may distract attention from the suffering of the people of Gaza. The people of Gaza are in fact imprisoned within their territory, subjected to serious restrictions of

movement within their territory, rendered unemployed and poverty-stricken by Israeli practices and, in many cases, made homeless by the IDF. This reality should not be overlooked.

14. Israel sees the political advantages in withdrawing from Gaza. In particular, it claims that it would no longer be categorized as an occupying Power in the territory subject to the Fourth Geneva Convention. In reality, however, Israel does not plan to relinquish its grasp on the Gaza Strip. It plans to maintain its authority by controlling Gaza's borders, territorial sea and airspace. That Israel intends to retain ultimate control over Gaza is clear from the Israeli disengagement plan of April 2004. This disengagement plan states in respect of Gaza, inter alia, that "The State of Israel will supervise and maintain the external land envelope, have exclusive control of the air space of Gaza and continue to carry out military activity in the Gaza Strip's maritime space. ... The State of Israel will continue to maintain a military presence along the border line between the Gaza Strip and Egypt (the Philadelphi route). This presence is a vital security need. In certain places a physical broadening of the area in which this military activity is carried out may be required." Another means of control that is being contemplated is the installation of high-tech listening devices in major buildings in the Gaza Strip in order to enable the Israeli authorities to monitor communications. This means that Israel will remain an occupying Power under international law. The test for application of the legal regime of occupation is not whether the occupying Power fails to exercise effective control over the territory, but whether it has the ability to exercise such power, a principle confirmed by the United States Military Tribunal in *In re List and others (The Hostages Case)* of 1948. It is essential that the international community take cognizance of the nature of Israel's proposed withdrawal and of its continuing obligations under the Fourth Geneva Convention.

IV. The Wall

15. The Wall is responsible for much of the suffering of the Palestinian people and, if continued, will be responsible for still greater suffering. As shown by the International Court of Justice, it violates both humanitarian law and human rights law and undermines the right of the Palestinian people to self-determination. For this reason the Wall has been the focus of special attention in two previous reports and remains a major focus of attention in the present report. In order to further his understanding of the consequences of the Wall from the perspective of human rights, the Special Rapporteur visited the Wall in the Jerusalem area (A-Ram, Abu Dis, Kalandiya, Beit Sourik and Biddu), Qalqiliya (Isla and Jayyous villages) and Bethlehem. Previously, the Special Rapporteur has visited villages in the Qalqiliya and Tulkarem region.

16. Israel claims that the purpose of the Wall is to secure Israel from terrorist attacks. It draws attention to the fact that statistics for the first half of 2004 show that terrorist attacks inside Israel have dropped by no less than 83 per cent compared to a similar period in 2003. Two comments may be made on this claim. First, there is no compelling evidence that this could not have been done with equal effect by building the Wall along the Green Line or within the Israeli side of the Green Line. Secondly, the evidence that the course of the Wall within Palestinian territory is required by security considerations is not conclusive. This is shown by the judgement of the Israeli High Court of Justice in *Beit Sourik Village Council vs. the*

Government of Israel. Here, the Israeli High Court weighed the security justifications for the course of the Wall in Palestinian territory advanced by the Israeli military commander against less intrusive security proposals suggested by the Israeli Council for Peace and Security, an independent body comprising retired Israeli military officers, and in several instances preferred the latter's proposals. The High Court's consideration of competing proposals for the course of the Wall in the context of security and proportionality demonstrates the difficulties inherent in such an exercise and brings into question the military justifications for the course of the Wall.

17. More convincing explanations for the construction of the Wall in the OPT are the following:

- To incorporate settlers within Israel;
- To confiscate Palestinian land;
- To encourage an exodus of Palestinians by denying them access to their land and water resources and by restricting their freedom of movement.

These explanations are considered below.

A. The incorporation of settlements

18. The course of the Wall indicates clearly that its purpose is to incorporate as many settlers as possible into Israel. This is borne out by the statistics which show that some 80 per cent of settlers in the West Bank will be included on the Israeli side of the Wall. If further proof of this obvious fact is required, it is to be found in an article written by Benjamin Netanyahu, Minister of Finance of Israel and a former Prime Minister, in the *International Herald Tribune* on 14 July 2004, in which he wrote: "A line that is genuinely based on security would include as many Jews as possible and as few Palestinians as possible within the fence. That is precisely what Israel's security fence does. By running into less than 12 per cent of the West Bank, the fence will include about 80 per cent of Jews and only 1 per cent of Palestinians who live within the disputed territories."

19. Settlements are, of course, unlawful under international law. This was the unanimous view of the International Court of Justice in its Advisory Opinion. The Court found that "The Israeli settlements in the Occupied Palestinian Territory (including East Jerusalem) have been established in breach of international law", and that "the route chosen for the wall gives expression *in loco* to the illegal measures taken by Israel with regard to Jerusalem and the settlements" (paras. 120 and 122). Moreover, Judge Buergenthal, the sole dissenting judge in the Opinion, stated that he agreed that article 49 (6) of the Fourth Geneva Convention applied to the Israeli settlements in the West Bank from which it followed "that the segments of the wall being built by Israel to protect the settlements are *ipso facto* in violation of international humanitarian law" (para. 9).

20. Despite this, there is overwhelming evidence of settlement expansion in the West Bank. No longer does the Government of Israel even pay lip service to its claim of several years ago that it would "freeze" settlement expansion. New building starts in Israeli settlements increased by 35 per cent in 2003 and in early March 2004 the Israeli Ministry of Housing and Construction was engaged in

discussion with construction contractors for plans to market another 2,414 housing units over the coming year in settlements such as Kiryat Arba, Har Homa, Beitar Illit, Sur Hadar, Ma'aleh Adumim, Givat Zeev and Pisgat Zeev. New settlements are to be established in the Bethlehem area, and the settlement of Kidmat Zion is to be built near Abu Dis and that of Nof Zahav near Jabal Mukhaber. Mr. Sharon has furthermore announced that in return for dismantling settlements in the Gaza Strip and four small settlements in the northern West Bank (Ghanim, Khadim, Sa-Nur and Homesh), the remaining settlements in the West Bank will be consolidated and expanded. According to a 2004 report of the Director General of the International Labour Organization, "the settler population has continued to increase rapidly, at an annual rate of 5.3 per cent in the West Bank and 4.4 per cent in Gaza since 2000, reaching close to 400,000 persons in the occupied Palestinian territories. This is equivalent to 6 per cent of the Israeli population and 11.5 per cent of the Palestinian population in 2002. The increase in the settler population has been much faster than population growth in Israel (at 1.4 per cent per year over 2000 to 2002), thereby indicating more than natural demographic growth even allowing for higher fertility among settler families."

21. Settler expansion has unfortunately been accompanied by settler violence. Numerous incidents have been reported of settler attacks on Palestinians and their land and it is reported that there had been a 20 per cent increase in settler violence. There are also allegations of well poisoning by settlers. Settler behaviour is particularly disgusting in Hebron where settlers continuously harass Palestinians and damage their property. The Special Rapporteur had first-hand experience of this when the vehicle in which he was travelling with the Temporary International Presence in Hebron (TIPH) was spat upon by settlers and splattered with paint. Obstacles placed in the road by settlers were not removed despite a request by a TIPH official. On the contrary, members of the IDF laughingly indicated their approval of the action of the settlers and refused to intervene. This despite Israel's legal obligation to cooperate with TIPH.

22. Plans to incorporate more settlements within the Wall are being implemented. Steps are being taken to include the settlement of Ariel on the Israeli side of the Wall. In June 2004, Defence Ministry officials sent Palestinian residents of the town of Salfit, south of Ariel, preliminary appropriation orders for land upon which the Wall is to be built. This action is being taken despite assurances given to the United States that no such construction would be undertaken. Although the High Court of Israel in the *Beit Sourik* case did not rule on the question whether the Wall might be built to include settlements, it seems implicit in its judgement that the building of the Wall to incorporate settlements would be unlawful. This follows from the following passage in the Court's judgement:

> "We accept that the military commander cannot order the construction of the Separation Fence if his reasons are political. The Separation Fence cannot be motivated by a desire to 'annex' territories to the State of Israel. The purpose of the Separation Fence cannot be to draw a political border. In [a previous case] this Court discussed whether it is possible to seize land in order to build a Jewish civilian town, when the purpose of the building of the town is not the security needs and defence of the area ... but rather based upon a Zionist perspective of settling the entire land of Israel. This question was answered by this Court in the negative" (para. 27).

B. Confiscation of Palestinian land

23. Another purpose of the Wall is to expand Israel's territorial possessions. Rich agricultural land and water resources have been seized along the Green Line and incorporated into Israel. On this visit, the Special Rapporteur witnessed the seizure of agricultural land in the region of the villages of Jayyous and Isla. The Wall has been built between Jayyous homes and rich Jayyous farmland, thereby separating Jayyous farmers from their land. The Wall separates Jayyous farmers from 120 greenhouses, 15,000 olive trees and 50,000 citrus trees. All seven of the town's water wells are on the Israeli side of the Wall. The same pattern was apparent near the village of Isla.

24. The route of the Wall in the south Hebron hills is also a source of concern. The Special Rapporteur visited the cave-dwellers in the Jimba region who are destined for removal from land they have occupied for generations. It is not clear whether the military have their eyes on this land for military exercises or whether it is intended for settlement expansion.

25. Nowhere are Israel's territorial ambitions clearer than in the case of Jerusalem. East Jerusalem was occupied by Israel in 1967 and illegally annexed to Israel in 1980. This annexation was internationally condemned and declared to be "of no legal validity" by a resolution of the Security Council. The territory annexed in this way amounts to 1.2 per cent of the occupied West Bank and has a Palestinian population of 249,000. These Palestinians are forced to have residence cards to live in their own territory. Certain benefits, particularly relating to health insurance, pensions and freedom of movement, attach to these residence rights. The land illegally incorporated into the Jerusalem municipality has been used to build illegal Israeli settlements in order to change the demographic make-up of the area. There are now 12 illegal Israeli settlements in this area and the total settler population in eastern Jerusalem amounts to 180,000. As a result of the creation of settlements in East Jerusalem, Palestinians with Jerusalem residence rights have been compelled to build houses outside the municipal limits of East Jerusalem.

26. In the last few months a wall has been built along the illegal border of East Jerusalem at places like Abu Dis, A-Ram and Kalandiya. This wall has a number of serious consequences. First, it gives effect to an illegal annexation and incorporates part of the city of Jerusalem (including the Holy Places) into Israel. Here it must be stressed that the Wall is to expand beyond the limits of the present Jerusalem municipality to incorporate an additional 59 square kilometres of the West Bank in what will be known as "Greater Jerusalem". (The total settler population of "Greater Jerusalem" (247,000) will amount to more than half of the Israeli settlers in the Occupied Palestinian Territory.) Second, it separates Palestinians from Palestinians and can in no conceivable way be justified as a security measure. Third, it threatens to deprive some 60,000 Palestinians who were previously resident within the Jerusalem municipal boundary of their residence rights. Fourth, it will divide families, some of whom carry Jerusalem residence documents and some of whom carry West Bank documents. Fifth, it makes contact between Palestinians and Palestinian institutions situated on different sides of the Wall hazardous and complicated. Sixth, it will affect 106,000 Palestinians in neighbourhoods in the West Bank who are dependent upon the facilities of East Jerusalem, including hospitals, universities, schools, employment and markets for agricultural goods. The Special Rapporteur met many Palestinian Jerusalemites who were seriously affected by the

construction of the Wall within Jerusalem. Unfortunately, their plight receives little attention as the international community has grown accustomed to the illegal annexation of Jerusalem. The Special Rapporteur stresses that the Wall incorporating Palestinian neighbourhoods in East Jerusalem into Israel is no different from the Wall in other parts of the West Bank which incorporates Palestinian land into Israel.

C. Forced exodus

27. A third purpose of the Wall is to compel Palestinian residents in the so-called "Seam Zone" between the Wall and the Green Line and those resident adjacent to the Wall, but separated from their lands by the Wall, to leave their homes and start a new life elsewhere in the West Bank by making life intolerable for them. This was acknowledged by the International Court in its Advisory Opinion (paras. 122 and 133).

28. Restrictions on freedom of movement in the Seam Zone pose particular hardships for Palestinians. Israel has designated the Seam Zone as a "Closed Zone" in which Israelis may travel freely but not Palestinians. Thus, over 13,500 Palestinians live in the Closed Zone, obliged to have permits to live in their own homes (see Order Regarding Security Regulations (Judea and Samaria) (No. 378) 5730/1970). Palestinians living within the West Bank with farms inside the Closed Zone moreover need permits to cross the Wall into this Zone, as do others who wish to visit the Zone for personal, humanitarian or business reasons. A recent study carried out by B'Tselem (the Israeli Information Centre for Human Rights in the Occupied Territories) demonstrates the arbitrary nature of the implementation of the permit system. Permits are to be granted for varying lengths of time depending on the kind of crop grown by the applicant. For example, olive growers should receive permits for October/November, the picking season, while owners of hothouses which require care throughout the year should be issued permits for a longer period of time. Testimonies given to B'Tselem by farmers in the area indicate that the authorities have constantly ignored the kind of crop being grown on the land. Sometimes olive growers have received permits for a period of three to six months while the owners of hothouses have received permits for shorter periods. In some cases, permits are granted for two weeks only. Moreover, about 25 per cent of the requests for permits to enter the Closed Zone were denied. Permits are rejected for failure to prove ownership and, in most cases, for security reasons. No reasons are given for the denial of a permit. Permits are intended to grant access to the Closed Zone through special gates in the Wall. In practice, these gates are not opened as scheduled. Farmers are compelled to wait at the gates for long periods of time until soldiers find it convenient to open the gates. For instance, the gates at Jayyous were opened for only 90 minutes a day (30 minutes each time). The arbitrary regime relating to the opening of gates has caused special problems during harvest time when intensive labour is required. (See *Not All It Seems: Preventing Palestinians' Access to their Lands West of the Separation Barrier in the Tulkarem-Qalqiliya Area.*)

29. In some instances, the Wall has been built with due regard to Palestinian homes. However, in some cases houses have been demolished where they are too close to the Wall. This is illustrated by the destruction of 10 homes and shops in the West Bank village of Azzun Atma in August 2004.

30. The main compulsion to leave the Closed Zone and the neighbourhood of the Wall is to be found in the separation of homes from land. All along the Wall, Palestinian homes are separated from their land. This report has above referred to the cases of Jayyous and Isla but they are not isolated examples. Many other villages have been similarly affected.

31. At this stage of the report, it is necessary to refer to the judgement of the High Court of Israel in the *Beit Sourik Village Council* case. In its judgement, the Court commented as follows upon the location of the Wall in the area north-west of Jerusalem near to Beit Sourik:

> "82. ... The length of the part of the Separation Fence to which these orders apply is approximately 40 kms. It causes injury to the lives of 35,000 local inhabitants. 4,000 dunams of land are taken up by the route of the Fence itself, and thousands of olive trees growing along the route itself are uprooted. The Fence separates the eight villages in which the local inhabitants live from more than 30,000 dunams of their land. The great majority of these lands are cultivated, and they include tens of thousands of olive trees, fruit trees and other agricultural crops. The licensing regime which the military commander wishes to establish cannot prevent or substantially decrease the extent of the severe injury to the local farmers. Access to the lands depends upon the possibility of closing the gates, which are very distant from each other and not always open. Security checks, which are likely to prevent the passage of vehicles and which will naturally cause long lines and many hours of waiting, will be performed at the gates. These do not go hand-in-hand with the farmer's ability to work his land. There will inevitably be areas where the Security Fence will have to separate the local inhabitants from their lands
>
> " ...
>
> "84. The injury caused by the Separation Fence is not restricted to the lands of the inhabitants or to their access to these lands. The injury is of far wider scope. It is the fabric of life of the entire population. In many locations, the Separation Fence passes right by their homes. ...
>
> "85. ... [W]e are of the opinion that the balance determined by the military commander is not proportionate. There is no escaping, therefore, a renewed examination of the route of the Fence, according to the standards of proportionality that we have set out."

32. The Government of Israel has indicated that it completely rejects the Advisory Opinion of the International Court of Justice. The Government has, however, made it clear that it will abide by the decision of the Israeli High Court of Justice in respect of sections of the Wall still to be built. Central Command Chief Major-General Moshe Kaplinsky stated on 13 July that the "security establishment has decided that no barrier will be built that separates Palestinian farmers from their fields and, therefore, no gates for agricultural crossings will be built in any of the future sections of the Separation Fence". Government statements indicate that there is no intention to review the 200 kms of the Wall that has already been built.

33. In the first place, the Special Rapporteur calls upon the Government of Israel to honour the Advisory Opinion of the International Court of Justice, which was approved by the General Assembly by 150 votes in favour on 20 July 2004. This Court, the judicial organ of the United Nations, has pronounced itself almost

unanimously against the legality of the Wall. Israel is therefore in law obliged to dismantle the Wall and to compensate Palestinians who have suffered as a result of its construction. If the Government of Israel declines to do this, it should at least honour the judgement of its own Supreme Court sitting as the High Court of Justice in the *Beit Sourik Village Council* case. From this judgement it is clear that substantial portions of the already constructed Wall fail to comply with the principles of proportionality expounded by the High Court. There is no reason why the Wall should not be dismantled where it fails to meet these requirements.

V. Freedom of movement

34. Freedom of movement is a freedom recognized by all international human rights instruments. Article 12 of the International Covenant on Civil and Political Rights provides that everyone shall "have the right to liberty of movement and freedom to choose his residence". Despite this, serious restrictions are imposed on the freedom of movement of all Palestinians, whether in the Gaza Strip or in the West Bank. They are a source of constant humiliation and cause personal suffering and inconvenience to every Palestinian. In addition, these restrictions are primarily responsible for the decline of the Palestinian economy.

35. The inhabitants of Gaza are effectively imprisoned by a combination of wall, fence and sea. Gaza's borders are rigorously patrolled by the IDF and passage in and out of Gaza is strictly controlled. While some Gazans are released to work in Israel when the security situation permits and a handful of officials and other privileged persons are permitted to leave and return to Gaza, the overwhelming majority of the people of Gaza are confined within its borders. Indeed, it is almost impossible for males between the age of 16 and 35, including medical patients and students, to leave Gaza through Rafah Terminal, which is the only exit from the Gaza Strip to Egypt. Within Gaza, freedom of movement is restricted by regularly and rigorously imposed roadblocks. The Gaza Strip is effectively divided into two by the checkpoint at Abu Houli on the main north-south road, Salah-Al-Din. There are also additional temporary and permanent road barriers in the north and south of the Gaza Strip and a number of areas, including Al Mawasi and Al Sayafa, are blocked off from the rest of the Gaza Strip by Israeli military patrols.

36. The inhabitants of the West Bank suffer from a variety of forms of restriction of movement. Residents of one city may not travel freely to another city in the West Bank: they require permits from the IDF for this purpose — and permits may be arbitrarily withheld. Permits are seldom granted for private vehicles. Anyone embarking upon a journey from one city to another city within the West Bank is subjected to IDF-controlled checkpoints, some permanent and some temporary. Checkpoints are also erected within cities and districts. There are several hundred checkpoints throughout the West Bank and Gaza, blocking traffic between villages and towns, between cities or into Israel. The checkpoint is not the sole instrument of restriction of freedom of movement. Although less frequently used than in past years, the curfew remains a regular occurrence, as illustrated by the experience of Nablus. This apparatus of control of freedom of movement of people and goods has precipitated the prevailing economic crisis and resulted in widespread unemployment and severe disruption to education, health care services, work, trade, family and political life.

37. Travel within both the Gaza Strip and the West Bank is aggravated by the presence of separate bypass roads linking the settlements to each other and settlements to Israel. Palestinians are prohibited from using these roads.

38. The Wall in the Jerusalem area threatens to become a nightmare. Those on the West Bank side of the Wall with West Bank identity documents will be denied access to work, schools, universities, hospitals and places of worship on the Israeli side of the Wall. Similarly, those on the Israeli side of the Wall will be denied access or find access seriously inconvenient to their places of work, educational institutions and hospitals on the West Bank side of the Wall. Many Palestinians with Jerusalem residence documents are married to West Bank identity document-holders. Whether they will be permitted to live together in Jerusalem remains to be seen. There is also a real fear that Jerusalem identity document-holders forced to live outside the Wall, as a result of the unavailability of property within East Jerusalem, will lose their Jerusalem residence rights. All the region's residents, numbering several hundred thousand, will be forced to pass through one large terminal at Kalandiya. Some of these persons will have West Bank identity documents and some will have Jerusalem residence permits. Although there are no clear estimates of the number of Palestinians who will have to pass through the Kalandiya terminal daily, it is clear that it will reach the tens of thousands. Most of those passing through to work or to school will reach the terminal at peak hours and great commotion can be expected. At this stage, it is simply impossible to predict the magnitude of the hardships to which the Palestinians living in and around Jerusalem will be subjected as a result of the Wall.

39. As indicated above, a special permit system applies for persons living or farming along the Seam Zone between the Wall and the Green Line. They require permits to move between home and agricultural land and often these permits are denied or granted for limited periods only. Moreover, the gates giving access to the Closed Zone are frequently not opened at scheduled times. In general, this system is operated in a totally arbitrary manner. The psychological implications of the Wall have recently been the subject of a study by the Palestinian Counselling Centre dated 29 June 2004. This report shows that persons living close to the Wall, particularly those who are obliged to pass through the gates of the Wall, have manifested severe psychosomatic symptoms from their state of anxiety.

40. The Special Rapporteur is unfortunately compelled to compare the different permit systems that govern the lives of Palestinians with the notorious "pass law" system which determined the right of Africans to move and reside in so-called white areas under the apartheid regime of South Africa. The South African pass laws were administered in a humiliating manner, but uniformly. The Israeli laws are likewise administered in a humiliating manner but they are not administered clearly or uniformly. The arbitrary and capricious nature of their implementation imposes a great burden on the Palestinian people. Restrictions on freedom of movement constitute the institutionalized humiliation of the Palestinian people. "Road apartheid" was unknown in South Africa. By creating separate and unequal roads for settlers and Palestinians, Israel has gone beyond the scope of restraints on freedom of movement imposed by apartheid.

VI. Conclusion

41. This report has focused on three issues: the destruction of property in Gaza, the consequences of the Wall and restrictions on freedom of movement. The Special Rapporteur has drawn attention to the serious violations of human rights and humanitarian law flowing from these actions of the Government of Israel. Israel is both legally and morally obliged to bring its practices and policies into line with the law. The High Court of Justice of Israel has rightly declared, "There is no security without law" (*Beit Sourik* case, para. 86).

42. As the International Court of Justice indicates in its Advisory Opinion, approved by the General Assembly, there are consequences of the Wall for States other than Israel. The Special Rapporteur reminds States of their obligation not to recognize the illegal situation resulting from the construction of the Wall and not to render aid or assistance in maintaining the situation created by such construction. In addition, all States parties to the Fourth Geneva Convention are obliged to ensure compliance by Israel with the international humanitarian law embodied in this Convention. Israel's defiance of international law poses a threat not only to the international legal order but to the international order itself. This is no time for appeasement on the part of the international community.

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Programme of activities for the International Decade of the World's Indigenous People, 1995-2004

Status of the United Nations Voluntary Fund for Indigenous Populations

Note by the Secretary-General

The Secretary-General has the honour to transmit herewith to the members of the General Assembly the biennial report of the United Nations High Commissioner for Human Rights on the status of the United Nations Voluntary Fund for Indigenous Populations, submitted in accordance with Assembly resolution 57/192.

* A/59/150.

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Report of the United Nations High Commissioner for Human Rights on the status of the United Nations Voluntary Fund for Indigenous Populations

Summary

The previous biennial report of the Secretary-General on the status of the United Nations Voluntary Fund for Indigenous Populations (A/57/296), indicating the activities undertaken with the resources of the Fund and showing income and expenditure as well as the pledges and payments made to the Fund, was submitted to the General Assembly at its fifty-seventh session. The present report updates the information contained in that report and reports on the sixteenth and seventeenth sessions of the Board of Trustees, held in 2003 and 2004 respectively.

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I. Mandate of the Fund

1. Convinced that the establishment of a voluntary trust fund would constitute a significant development for the future promotion and protection of the human rights of indigenous populations, the General Assembly, by resolution 40/131 of 13 December 1985, established the United Nations Voluntary Fund for Indigenous Populations. The purpose of the Fund is to assist representatives of indigenous communities and organizations to participate in the deliberations of the Working Group on Indigenous Populations of the Subcommission on the Promotion and Protection of Human Rights by providing them with financial assistance, funded by means of voluntary contributions from Governments, non-governmental organizations and other private or public entities.

2. By resolution 50/156 of 21 December 1995, the General Assembly extended the mandate of the Fund by deciding that the Fund should also be used to assist representatives of indigenous communities and organizations to participate in the deliberations of the open-ended intersessional working group of the Commission on Human Rights charged with elaborating a draft declaration on the rights of indigenous peoples, established by the Commission by its resolution 1995/32 of 3 March 1995 and endorsed by the Economic and Social Council by its resolution 1995/32 of 25 July 1995.

3. The General Assembly further extended the mandate of the Fund in its resolution 56/140 of 19 December 2001 by deciding that the Fund should be used to assist representatives of indigenous communities and organizations in attending, as observers, the sessions of the Permanent Forum on Indigenous Issues.

II. Administration and Board of Trustees

4. Pursuant to General Assembly resolution 40/131, the Fund is administered by the Secretary-General in accordance with the relevant financial rules and regulations of the United Nations on general trust funds for humanitarian assistance, through the Office of the United Nations High Commissioner for Human Rights, with the advice of a Board of Trustees.

5. The Board is composed of five persons with relevant experience in issues affecting indigenous populations, who serve in their personal capacity as United Nations experts. The Board members are appointed by the Secretary-General in consultation with the current Chairperson of the Sub-Commission, for a renewable three-year term. At least one member is a representative of a widely recognized organization of indigenous populations.

6. The five members who have been appointed by the Secretary-General for a three-year term ending on 31 December 2005 are themselves indigenous representatives: Victoria Tauli-Corpuz (Chairperson, Philippines), Lars Anders Baer (Sweden), Nadir Bekirov (Ukraine), Ahmed Mahiou (Algeria) and José Carlos Morales (Costa Rica).

III. Beneficiaries

7. The criteria for the selection of beneficiaries have been established by the General Assembly, the Commission on Human Rights and the Secretary-General, upon the recommendation of the Board of Trustees (see annex).

IV. Grant cycle

A. Deadline for the receipt of new applications

8. Applications for travel grants to attend the 2005 sessions must be submitted by the established deadline of 1 October 2004 to allow for analysis by the secretariat of the Fund and Board. Admissible applications will be examined by the Board at its next session in 2005.

B. Admissibility of new applications

9. During the period between the receipt of the application and the next session of the Board, the secretariat of the Fund decides on the admissibility of applications on the basis of the mandate of the Fund.

C. Selection process

10. Admissible application forms are verified by the secretariat of the Fund as to their conformity with approved selection criteria, and additional information is requested from the organization if necessary. Reference organizations and specialized networks are also consulted if needed. The complete application form is then summarized and analysed by the secretariat in accordance with the selection criteria in a chart form to facilitate the work of the Board of Trustees.

11. At its annual session, the Board reviews all applications declared admissible, including the original application form, the analysis chart prepared by the secretariat and any other relevant information. The Board then makes recommendations to the Secretary-General in accordance with the guidelines of the Fund (annex).

12. After the session, the secretariat reviews all the Board's recommendations for consistency with relevant United Nations administrative and financial rules and regulations. The United Nations High Commissioner for Human Rights approves, on behalf of the Secretary-General, the recommendations that are acceptable as well as new best practices identified during the annual session of the Board.

D. Travel grants

13. Approved travel grants include a round-trip air ticket in economy class via the most direct route from the beneficiary's home town to Geneva or New York, which each beneficiary receives in his or her local travel agency, and a daily subsistence allowance for the days of the session, which he or she receives upon arrival in Geneva or New York.

E. Payment of grants

14. The beneficiaries are requested to approve all conditions attached to the grant such as participating in all meetings of the session. Upon receipt of this confirmation, the secretariat of the Fund requests the Office of the High Commissioner to prepare their travel promptly.

F. Monitoring

15. Travel grants are closely monitored before and during the sessions of the working groups and the Permanent Forum. Beneficiaries are requested to provide a copy of any statement delivered as part of their reporting obligations and to complete a questionnaire on their participation upon return to their home countries.

G. Evaluation by the Board and secretariat

16. At its annual session the Board reviews the status of all travel grants allocated in previous years.

17. Reference organizations and specialized networks may be invited for a hearing at the session of the Board to provide additional information on a specific organization, answer any questions put by the Board, explain their activities to the Board or respond in any other way required.

18. The Chairman, or another Board member if possible, attends the Working Group on Indigenous Populations and the Permanent Forum sessions in order to meet with all beneficiaries present and to assess the impact of their participation on the deliberations of the session. During the Working Group and Permanent Forum, the secretariat of the Fund also closely monitors the implementation of the recommendations adopted by the Board.

H. Information flow

19. The secretariat of the Fund responds systematically to all correspondence received from organizations, first by acknowledging receipt of the application and if necessary requesting additional information to complete the application and secondly, once the decisions have been approved, by informing all applicants of the result.

V. Payment of contributions

20. In order to meet the requirements of the grant cycle and to meet new requests for funding during a current year, new voluntary contributions should be paid to the Fund by the end of December in order to be duly recorded by the United Nations Treasurer well in advance of the annual session of the Board. Contributions that cannot be recorded before the session of the Board will be used at its next annual session.

VI. Sixteenth session of the Board of Trustees

21. During the 10 meetings of its sixteenth session, held in Geneva from 31 March to 4 April 2003, the Board of Trustees examined information prepared by its secretariat concerning the financial situation of the Fund; new contributions paid and pledges made by Governments since the fifteenth session; applications for new travel grants to attend the twenty-first session of the Working Group on Indigenous Populations, applications for new travel grants to attend the ninth session of the working group charged with elaborating a draft declaration on the rights of indigenous peoples and applications to attend the second session of the Permanent Forum on Indigenous Issues. The Board also met with representatives of donor Governments during its annual meeting with donors, as well as with the secretaries of the two working groups and with Mr. Yorio Shiokawa, a Japanese individual donor. All recommendations made by the Board of Trustees were approved by the United Nations High Commissioner for Human Rights, on behalf of the Secretary-General, on 6 May 2003.

22. The following contributions were received in time for the allocation of travel grants at the sixteenth session of the Board:

State	*Amount (United States dollars)*	*Date received*
Algeria	4 978	18 March 2003
Canada	9 747	30 January 2003
Cyprus	2 000	6 August 2002
Estonia	9 787	24 December 2002
Finland	33 996	24 October 2002
	33 996	20 March 2003
Greece	6 300	1 November 2002
Holy See	1 000	22 October 2002
Israel	5 000	30 December 2002
Switzerland	66 667	30 September 2002
Total	**173 471**	

23. The following pledges were made:

Country	*Amount (United States dollars)*	*Date pledged*
Bolivia	1 000	2-3 November 1999[a]
	5 000	7-8 November 2001[b]
Chile	1 000	5 November 2002[c]
Denmark	43 278	27 March 2003
	5 000	7 November 2001
Venezuela	5 000	5 November 2002[c]
Total	**60 278**	

[a] Pledge made at the 1999 United Nations Pledging Conference for Development Activities in New York.
[b] Pledge made at the 2001 United Nations Pledging Conference for Development Activities in New York.
[c] Pledge made at the 2002 United Nations Pledging Conference for Development Activities in New York.

A. Implementation of recommendations adopted at the fifteenth session

24. The Board noted with satisfaction that all recommendations adopted at its fifteenth session in 2002 (see E/CN.4/Sub.2/AC.4/2002/6) had been implemented by its secretariat.

25. As a follow-up to its recommendations of its fourteenth session concerning an internal review by the Chairperson on the impact of the travel grants, the Chairperson reported her views to the Board at its sixteenth session.

26. The methodology that was used was as follows: interviews with some of the grantees of the Fund; an analysis of the reports and trends from 1995 to 2002 in relation to the applications received and approved and the contributions received from donors; participant observation during the sessions where the grantees were present. Discussions were also held between the members of the Board on their individual assessments. Discussions were likewise held with the secretariat of the Fund and some donors.

27. The Board members noted with appreciation that the Fund and the Board were used as a model for the establishment of various other funds within and outside the United Nations system, including a fund to allow beneficiaries of travel grants to attend the sessions of a working group of the Organization of American States in Washington to adopt a declaration on indigenous rights, a fund to be established under the Convention on Biological Diversity, as well as another Fund to be established by the World Intellectual Property Organization.

B. Consideration of new applications for grants

28. The Board considered the following:

(a) Two hundred and thirty-three (233) admissible new applications for grants to cover travel and per diem expenses for representatives of indigenous organizations and communities to attend the twenty-first session of the Working Group on Indigenous Populations, which took place in Geneva from 21 to 25 July 2003:

Geographical area[a]	*Number of applicants*	*Female*	*Male*
Africa	76	32	44
America	71	23	48
Asia	72	23	49
Europe	14	6	8
Total	**233**	**84**	**149**

[a] The geographical distribution reflects the applications received and not necessarily the geographical distribution in use by the United Nations Secretariat in United Nations legislative bodies.

(b) Twenty-three (23) admissible new applications for grants to cover travel and per diem expenses for representatives of indigenous organizations and communities to attend the ninth session of the working group charged with elaborating a draft declaration on the rights of indigenous peoples, held in Geneva from 15 to 26 September 2003:

Geographical area[a]	*Number of applicants*	*Female*	*Male*
Africa	4	3	1
America	4	0	4
Asia	10	3	7
Europe	5	3	2
Total	**23**	**9**	**14**

[a] The geographical distribution reflects the applications received and not necessarily the geographical distribution in use by the United Nations Secretariat in United Nations legislative bodies.

(c) During the intersessional period, the Secretariat implemented the new mandate established by the General Assembly to enable a total of 43 indigenous observers to attend the second session of the Permanent Forum on Indigenous Issues held in New York from 12 to 23 May 2003. A total of 206 admissible new applications for grants to cover travel and per diem expenses for representatives to attend the second session of the Permanent Forum were received:

Geographical area[a]	*Number of applicants*	*Female*	*Male*
Africa	67	19	488
America	60	21	399
Asia	68	23	455
Europe	11	3	88
Total	**206**	**66**	**1 430**

[a] The geographical distribution reflects the applications received and not necessarily the geographical distribution in use by the United Nations Secretariat in United Nations legislative bodies.

C. Recommendations for grants

29. After having examined the applications in the light of the selection criteria (see annex), the Board recommended the following:

(a) Eighty (80) travel grants to allow representatives of indigenous communities and organizations to attend the Working Group on Indigenous Populations, for a total amount of approximately US$ 144,000 (for a list of beneficiaries, see E/CN.4/Sub.2/AC.4/2003/12, annex III):

Geographical area[a]	*Number of beneficiaries*	*Female*	*Male*
Africa	25	12	13
America	22	8	14
Asia-Pacific	25	11	14
Europe-Arctic	8	3	5
Total	**80**	**34**	**46**

[a] The geographical distribution reflects the applications received and not necessarily the geographical distribution in use by the United Nations Secretariat in United Nations legislative bodies.

(b) Fifteen (15) travel grants to allow representatives of indigenous communities and organizations to attend the working group charged with elaborating a draft declaration on the rights of indigenous peoples, for a total amount of approximately US$ 41,000 (for a list of beneficiaries see E/CN.4/Sub.2/AC.4/2003/12, annex IV):

Geographical area[a]	*Number of beneficiaries*	*Female*	*Male*
Africa	2	2	0
America	3	0	3
Asia-Pacific	6	1	5
Europe-Arctic	4	2	2
Total	**15**	**5**	**10**

[a] The geographical distribution reflects the applications received and not necessarily the geographical distribution in use by the United Nations Secretariat in United Nations legislative bodies.

(c) Forty-three (43) travel grants to allow representatives of indigenous communities and organizations to attend the Permanent Forum on Indigenous Issues, for a total amount of approximately US$ 300,000 (for a list of beneficiaries see the note by the secretariat of the Fund (E/C.19/2003/11, annex II)):

Geographical area[a]	*Number of beneficiaries*	*Female*	*Male*
Africa	13	4	7
America	13	7	6
Asia-Pacific	11	5	8
Europe-Arctic	6	2	4
Total	**43**	**18**	**25**

[a] The geographical distribution reflects the applications received and not necessarily the geographical distribution in use by the United Nations Secretariat in United Nations legislative bodies.

VII. Intersessional consultations concerning the new mandate of the Fund (March 2003)

30. At its fifteenth session in 2002, the Board of Trustees recommended that a special session be held, from 24 to 26 February 2003, to approve applications for travel grants to attend the second session of the Permanent Forum which was scheduled to be held in May 2003. However, as the new membership of the Board had just been approved, it was not possible to hold a special meeting to decide on that issue.

31. As a result, the Board of Trustees followed the procedure that was approved in 2001 for intersessional consultations concerning the new mandate of the Fund as decided by the General Assembly resolution 56/140 in selecting beneficiaries of travel grants to attend the second session of the Permanent Forum.

VIII. Seventeenth session of the Board of Trustees

32. During the meetings of its seventeenth session, held in Geneva from 11 to 19 March 2004, the Board of Trustees examined information prepared by its secretariat concerning the financial situation of the Fund; new contributions paid and pledges made by Governments since the sixteenth session; applications for new travel grants to attend the twenty-second session of the Working Group on Indigenous Populations; and applications for new travel grants to attend the tenth session of the working group charged with elaborating a draft declaration on the rights of indigenous peoples and applications to attend the third session of the Permanent Forum on Indigenous Issues. The Board also met with representatives of donor Governments during its annual meeting with donors; the Chief of the Research and Right to Development Branch of the Office of the High Commissioner for Human Rights (OHCHR) and the Chief of the Office's Budget and Finance, as well as a member of the OHCHR Resource Mobilisation Unit and the Chief of the External Relations Branch. The recommendations made by the Board of Trustees were approved by the Acting United Nations High Commissioner for Human Rights, on behalf of the Secretary-General, on 22 April 2004.

33. The following contributions were paid in time for the seventeenth session of the Board:

State, non-governmental organization and individual	*Amount (United States dollars)*	*Date paid*[a]
Chile	1 000	31 July 2003
Canada	11 044	16 March 2004
Denmark	42 121	22 April 2003
	48 999	11 March 2004
Estonia	11 816	30 December 2003
Greece	6 500	1 August 2003
Guatemala	10 004	14 July 2003
Holy See	1 000	4 December 2003
Israel	5 000	23 October 2003
Norway	49 168	2 May 2003
Mr. Yorio Shiokawa	146	27 March 2003
Mr. Sachiko Hotta	146	27 March 2003
Members of the Aichi International Connecting Conference for Human Rights, Japan	128	27 March 2003
Total	**187 072**	

[a] According to official receipt vouchers available at the Office of the United Nations High Commissioner for Human Rights.

34. The following pledges were received in time for the fifteenth session of the Board:

State	Amount (United States dollars)	Date pledged
Bolivia	1 000	2-3 November 1999[a]
Chile	5 000	7-8 November 2001[b]
	5 000	7 November 2001
Venezuela	5 000	5 November 2002[c]
Total	**16 000**	

[a] Pledge made at the 1999 United Nations Pledging Conference for Development Activities in New York.
[b] Pledge made at the 2001 United Nations Pledging Conference for Development Activities in New York.
[c] Pledge made at the 2002 United Nations Pledging Conference for Development Activities in New York.

A. Implementation of recommendations adopted at the sixteenth session

35. The Board noted with satisfaction that all recommendations adopted at its sixteenth session in 2003 (see E/CN.4/Sub.2/AC.4/2003/12) had been implemented by its secretariat.

B. Consideration of new applications for grants

36. The Board considered 266 new admissible applications for grants to cover travel and per diem expenses for representatives of indigenous organizations and communities to attend the twenty-second session of the Working Group on Indigenous Populations, which took place in Geneva from 19 to 23 July 2004:

Geographical area[a]	Number of applicants	Female	Male
Africa	99	34	65
America	78	37	41
Asia-Pacific	79	19	60
Europe-Arctic	10	5	5
Total	**266**	**95**	**171**

[a] The geographical distribution reflects the applications received and not necessarily the geographical distribution in use by the United Nations Secretariat in United Nations legislative bodies.

37. The Board further considered 35 new admissible applications for grants to cover travel and per diem expenses for representatives to attend the tenth session of the working group charged with elaborating a draft declaration on the rights of indigenous peoples, which took place in Geneva from 13 to 24 September 2004:

Geographical area[a]	*Number of applicants*	*Female*	*Male*
Africa	7	2	5
America	13	4	9
Asia-Pacific	9	2	7
Europe-Arctic	6	2	4
Total	**35**	**10**	**25**

[a] The geographical distribution reflects the applications received and not necessarily the geographical distribution in use by the United Nations Secretariat in United Nations legislative bodies.

38. In addition, the Board considered 246 new admissible applications for grants to cover travel and per diem expenses for representatives to attend the third session of the Permanent Forum on Indigenous Issues, which took place in New York from 10 to 21 May 2004:

Geographical area[a]	*Number of applicants*	*Female*	*Male*
Africa	90	31	59
America	78	35	43
Asia-Pacific	67	14	53
Europe-Arctic	11	4	7
Total	**246**	**84**	**162**

[a] The geographical distribution reflects the applications received and not necessarily the geographical distribution in use by the United Nations Secretariat in United Nations legislative bodies.

C. Recommendations for grants

39. After having examined the applications in the light of the selection criteria (see annex), the Board recommended the following:

(a) Forty-seven (47) travel grants to allow representatives of indigenous communities and organizations to attend the Working Group on Indigenous Populations, for a total amount of approximately US$ 154,212 (for the list of beneficiaries, see E/CN.4/Sub.2/AC.4/2004/8, annex III):

Geographical area[a]	*Number of applicants*	*Female*	*Male*
Africa	18	9	9
America	13	5	8
Asia-Pacific	12	4	8
Europe-Arctic	4	2	2
Total	**47**	**20**	**27**

[a] The geographical distribution reflects the applications received and not necessarily the geographical distribution in use by the United Nations Secretariat in United Nations legislative bodies.

(b) Seventeen (17) travel grants to allow representatives of indigenous communities and organizations[1] to attend the working group charged with elaborating a draft declaration on the rights of indigenous peoples, for a total amount of approximately US$ 71,444 (for the list of beneficiaries, see E/CN.4/Sub.2/AC.4/2004/8, annex V):

Geographical area[a]	*Number of applicants*	*Female*	*Male*
Africa	4	1	3
America	4	0	4
Asia-Pacific	6	2	4
Europe-Arctic	3	1	2
Total	**17**	**4**	**13**

[a] The geographical distribution reflects the applications received and not necessarily the geographical distribution in use by the United Nations Secretariat in United Nations legislative bodies.

(c) Forty-six (46) travel grants to allow representatives of indigenous communities and organizations to attend the Permanent Forum on Indigenous Issues, for a total amount of approximately US$ 249,700 (for the list of beneficiaries, see E/CN.4/Sub.2/AC.4/2004/8, annex IV):

Geographical area[a]	*Number of applicants*	*Female*	*Male*
Africa	15	7	8
America	15	11	4
Asia-Pacific	13	5	8
Europe-Arctic	3	1	2
Total	**46**	**24**	**22**

[a] The geographical distribution reflects the applications received and not necessarily the geographical distribution in use by the United Nations Secretariat in United Nations legislative bodies.

40. The selection of beneficiaries reflects the admissible applications received, which might not be geographically balanced, as some countries submitted many applications and others submitted only a few, or none at all.

D. Other recommendations

41. The Board emphasized that the beneficiaries of travel grants when accepting the conditions attached to the grant commit themselves to participate fully in the session of the working groups or the Permanent Forum; failure to do so would have a negative impact on future recommendations for grants.

42. The Board emphasized that beneficiaries of travel grants should report back to their communities to ensure that the community also benefits from the participation of its representative. In this respect, the Board adopted a new guideline by which each beneficiary, as part of his/her reporting obligation to the Fund, will be requested to report on the follow-up activities organized upon return as well as on his/her participation at the working groups or the Permanent Forum. A framework for reporting was elaborated and will be distributed among beneficiaries.

E. Dissemination of information on the Fund

43. During the sessions of the working groups and the Permanent Forum, the secretariat should continue to organize information meetings on the Fund for indigenous representatives.

44. The Board recommended that the members of the Board present at the next session of the Working Group on Indigenous Populations and the secretariat should meet with indigenous members from the various regional groups to discuss ways and means of disseminating information on the Funds to communities and countries that have still not applied to the Fund and that do not have access to information on the working groups or the Permanent Forum.

45. The Board recommended that the Bureau of the Working Group on Indigenous Populations at its annual session in 2004 should continue to invite the Chairperson, or any other member of the Board who could be in Geneva during the session, or the secretariat of the Board and Fund to deliver a statement introducing the report of the Secretary-General on the Fund. The Board recommended that the working group charged with elaborating a draft declaration follow the same practice.

46. The Board members have agreed to actively distribute the Fund's application forms as widely as possible, in particular in regions that have been underrepresented.

47. The Board encouraged the participation of indigenous cross-border organizations as well as partnerships among indigenous communities, including from different regions.

F. The future direction of the Fund

48. The members of the Board also discussed the future direction of the Fund in the light of the information provided by the Secretariat. The members took note of

the management changes, the establishment of the Task Force on United Nations Trust Funds as a follow-up to the Secretary-General's reform agenda and the increasing focus on the evaluation of results. The Board also noted the review of the United Nations mechanisms relating to indigenous issues to be undertaken by the Economic and Social Council as well as the end of the International Decade of the World's Indigenous People.

49. The members underlined the fundamental importance of the Fund and the Board as an independent United Nations body that provides direct assistance to indigenous peoples and allows them to participate in United Nations activities. They underlined the fact that at present all Board members are themselves indigenous representatives.

50. The Board members expressed their commitment to the Fund and requested that any proposed changes be discussed fully with them before they are implemented. In the context of these discussions, the Board members emphasized the need always to prioritize the interests of indigenous peoples.

G. Cost plan for 2005

51. The Board revised and approved the cost plan of the Fund for 2005 with envisaged expenditure amounting to US$ 777,000.

52. The Board expressed concern about the fact that there is a discrepancy between its approved cost plan and the figures that appear in the OHCHR Annual Appeal 2004. The Board expressed the hope that its cost plan for 2005 would be reflected in the annual appeal.

H. Fund-raising

53. The Board held its annual meeting with donors. Representatives of Algeria, Bolivia, Denmark, Estonia, Finland, Germany, Guatemala, the Libyan Arab Jamahiriya, Norway, the Netherlands, Turkey and the African Union attended. The Board expressed its appreciation for the donors' contributions to the Fund and their pledges.

54. The Board confirmed its practice of meeting each year with donors on the last day of its session.

55. Board members recommended that the High Commissioner for Human Rights send a letter to donors in September 2004 appealing for additional contributions to be paid before its next session in order to allow it to increase further the number of grants and the representation of indigenous communities and organizations in 2005.

56. The Board recommended that the Bureau of the Commission on Human Rights at its sixty-first session in 2005 should again invite the Chairperson, or any other member of the Board who could be in Geneva during the session, to deliver a statement introducing the report of the Secretary-General on the eighteenth session of the Board and on the activities and needs of the Fund and to appeal for new contributions.

I. Dates of the eighteenth session

57. In order to allow the secretariat to be able to analyse the applications to attend the fourth session of the Permanent Forum received before the deadline of 1 October 2004, the Board decided that its eighteenth session, of five days, should be held from 21 to 25 February 2005.

IX. Implementation of decisions concerning travel grants

58. The secretariat of the Fund reports to the Board of Trustees at each annual session on the implementation of all decisions made at its previous session and approved by the Secretary-General. The Board reviews the implementation of those decisions and the secretariat reports annually on their implementation to the General Assembly, within the report of the Secretary-General on the International Decade of the World's Indigenous People, to the Commission on Human Rights and to the Working Group on Indigenous Populations. The main report to the General Assembly is the present biennial report.

59. Some beneficiaries of the Fund may not be able to attend the sessions of the working groups or the Permanent Forum for personal reasons. In such cases, upon being informed, the secretariat of the Fund requests that the grant be cancelled. The money is then available in the Fund for allocation the following year.

60. A high percentage of beneficiaries attend the sessions. For example, for the 2003 sessions, out of the 80 beneficiaries who were given travel grants to attend the twenty-first session of the Working Group on Indigenous Populations, a total of 65 (81 per cent) attended the session. Out of the 15 beneficiaries who were given a travel grant to attend the working group charged with elaborating a draft declaration, 13 attended (86 per cent). Of the 43 beneficiaries of travel grants to attend the second session of the Permanent Forum on Indigenous Issues, 38 attended (88 per cent) the session. The money initially allocated for the grants to beneficiaries who were unable to attend was therefore part of the balance available for the Fund in 2004.

61. The decisions on the allocation of travel grants are made on the basis of the applications received from individuals; therefore, the grants are awarded to the person who applied. If the beneficiary of a grant is not able to attend a given session, on an exceptional basis and if time permits, the secretariat may approve the replacement of the beneficiary. In such a case, the secretariat requests a duly signed letter from the beneficiary and from an executive of the organization, as well as from the person proposed to replace the beneficiary. The secretariat will also request that the proposed replacement fill out a new application form. Once all these requirements are met, the secretariat will inform the Chairperson of the Board who, during the intersessional period, takes such decisions, with the advice of the member of the Board from the relevant geographical region, if needed.

X. Trends over the period 2003-2004

A. Annual increase in the number of applications received to attend the working groups

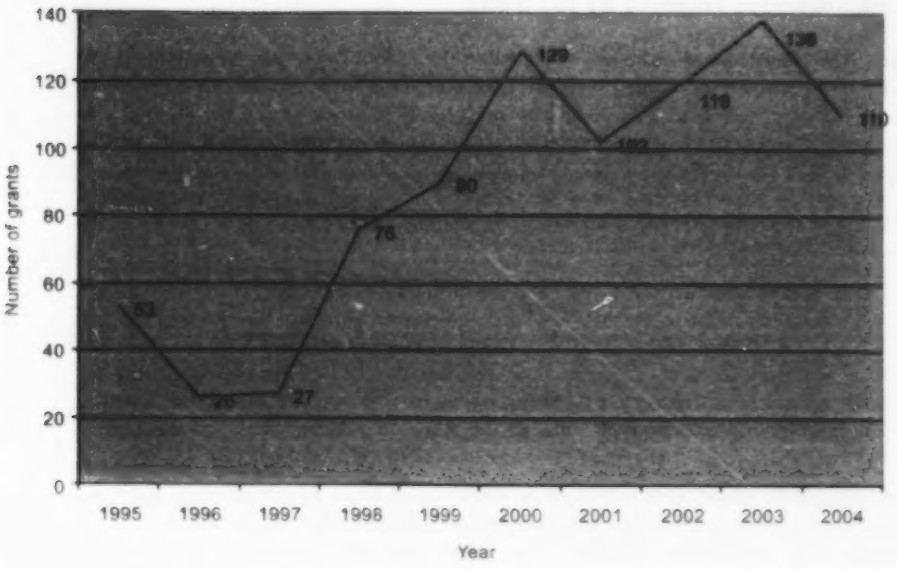
62. The Board of Trustees noted with satisfaction at its annual sessions the increase in the number of admissible applications received over the years from indigenous communities and organizations worldwide to attend the two working groups and the Permanent Forum on Indigenous Issues. The table below shows a substantial increase from 1997 (52 applications) to 2004 (547 applications):

Working groups	*1997*	*1998*	*1999*	*2000*	*2001*	*2002*	*2003*	*2004*
Working Group on Indigenous Populations	47	72	220	119	225	232	233	266
Working group charged with elaborating a draft declaration on the rights of indigenous people	5	3	20	36	32	27	23	35
Permanent Forum on Indigenous Issues	-	-	-	-	-	323	206	246
Total	**52**	**75**	**240**	**155**	**257**	**582**	**462**	**547**

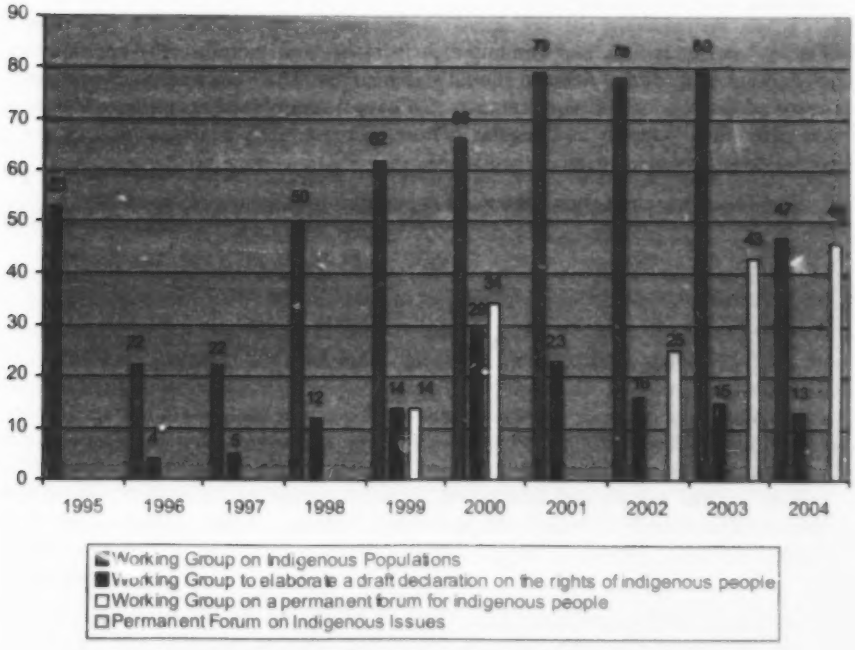
63. Every year, in addition to the admissible applications to attend the Working Group on Indigenous Populations, the secretariat receives more than 100 applications that are not admissible as they are not complete, do not fall within the mandate of the Fund, or are received after the established deadline. The secretariat also receives more than 50 applications annually to attend the working group charged with elaborating a draft declaration on the rights of indigenous people that are not admissible for the same reasons, or because the organizations do not have consultative status with the Economic and Social Council, or are not authorized to attend this working group by the Committee on Non-Governmental Organizations, in accordance with the procedure established by the Commission on Human Rights in its resolution 1995/32.

B. Annual allocation of travel grants

64. As mentioned above, the requests for travel grants from indigenous organizations and communities increases every year, and the Fund and Board must respond accordingly. In 2004 the secretariat received a total of 547 admissible applications to attend the two working groups and the Permanent Forum. With the resources available, it was able to allocate only 110 travel grants. Between 1995 and 2004 the Fund allocated grants as illustrated in the chart below:



65. The distribution of grants between 1995 and 2004, by session, is represented as follows:



C. Contributions received by the Fund

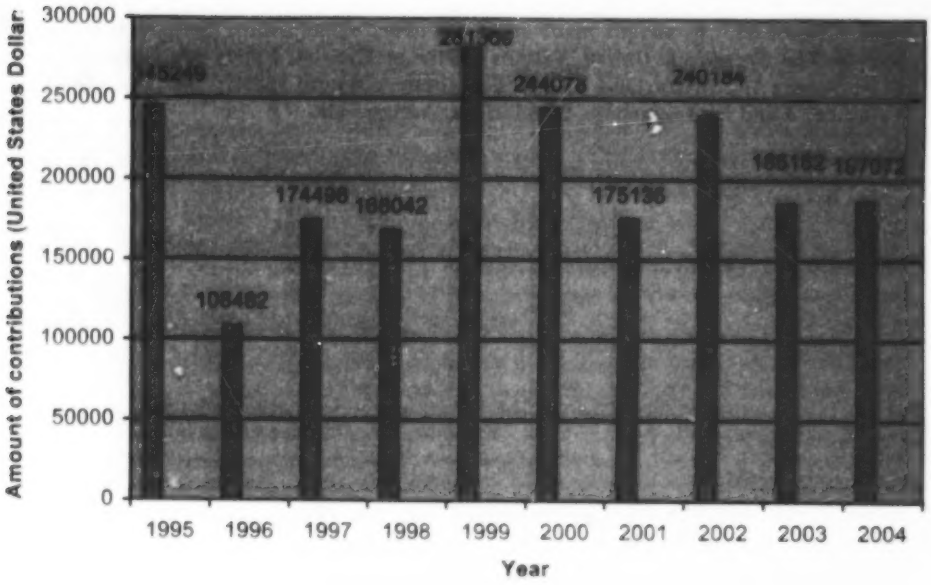
66. The Board can allocate travel grants on the basis of the contributions paid and duly registered by the United Nations Treasurer, as well as any balance remaining from previous years, as established by the United Nations Office at Geneva. The Board does not take pledges into consideration. Therefore, donors are kindly invited to pay their contributions to the Fund before the annual session of the Board, in order for the Board to be able to recommend allocating the money immediately. Contributions paid after the session will be available only for the next session of the Board.

67. In accordance with the relevant resolutions of the General Assembly, the Commission on Human Rights and the Subcommission on the Promotion and Protection of Human Rights, the High Commissioner for Human Rights, on behalf of the Secretary-General, annually sends a letter to all Governments appealing for regular annual contributions to the Fund, so as to allow the Fund and the Board to fulfil their mandate effectively and to meet the increasing needs of indigenous peoples.

68. Since the creation of the Fund in 1985, its mandate has been expanded three times in response to developments and the changing realities of the United Nations system and indigenous peoples. The Board and the secretariat have reacted immediately to those new challenges so as to enable indigenous people to benefit from each new mandate, with the support of the donors to the Fund. Over the years, the General Assembly and the regular donors to the Fund have viewed the Fund as an important tool in providing assistance to indigenous people and have recognized the accomplishments of its Board of Trustees in carrying out this task.

69. When the mandate of the Fund is extended, applications received from indigenous organizations and communities increase, and therefore the amount of contributions to meet this demand should also increase. The Fund and the Board can function effectively only if Governments that have not previously contributed to the Fund offer their support and regular donors increase their contributions, as the General Assembly has repeatedly requested.

70. The following chart shows the trend in contributions from 1995 to 2004:



D. Annual expenditure

71. In accordance with its mandate, the only expenditures encumbered annually under the United Nations Voluntary Fund for Indigenous Populations are travel grants for indigenous representatives to attend the two working groups and the Permanent Forum. A small amount of money (about US$ 30,000) is allocated every year for the organization of the session of the Board of Trustees in Geneva.

72. Additionally, in accordance with the United Nations financial rules and regulations governing the general trust funds for humanitarian assistance, 13 per cent of the envisaged expenditure is set aside to cover programme support costs and 15 per cent for the operating cash reserve.

XI. Conclusion

73. **The cost plan for 2005 foresees the need for approximately US$ 777,000 for assisting representatives of indigenous communities and organizations to participate in the deliberations of the Working Group on Indigenous Populations, the working group of the Commission on Human Rights charged with elaborating a draft declaration on the rights of indigenous peoples and the Permanent Forum on Indigenous Issues. Interested donors are invited to pay their contributions before the next session of the Board of Trustees (February 2005) in order to enable the Fund and the Board of Trustees to fulfil their mandate.**

74. **Contributions to the Fund can be made, in United States dollars and other currencies to: "United Nations Office at Geneva", account 485001802, J. P. Morgan Chase Bank, New York, NY 10004, United States of America — Swift**

code: CHASUS33; by cheque made out to the order of the United Nations, to be sent to The Treasurer, United Nations Office at Geneva, Palais des Nations, 1211 Geneva 10, Switzerland. In all cases, donors should specify: For the UN Voluntary Fund for Indigenous Populations, Account IH.

Annex

Criteria for the selection of beneficiaries

In accordance with General Assembly resolution 40/131, the only beneficiaries of assistance from the United Nations Voluntary Fund for Indigenous Populations shall be representatives of indigenous people's organizations and communities:

(a) Who are so considered by the Board of Trustees;

(b) Who would not, in the opinion of the Board, be able to attend the sessions of the working groups or the Permanent Forum on Indigenous Issues without the assistance provided by the Fund;

(c) Who would be able to contribute to a deeper knowledge on the part of the working groups or the Permanent Forum of the problems affecting indigenous populations and who would secure a broad geographical representation.

Furthermore, in accordance with Commission on Human Rights resolution 1995/32, in order to be able to attend the working groups of the Commission on Human Rights, organizations must hold consultative status with the ECOSOC or be authorized by the Committee on Non-Governmental Organizations.

In addition, the Secretary-General approved the following criteria upon recommendation by the Board:

(a) The representatives and the organizations applying for a grant should be indigenous;

(b) The Board does not consider applicants who do not provide a letter of support signed by an executive of their indigenous organization nor an applicant who is not an indigenous person;

(c) The Board considers a maximum of two applicants per organization;

(d) Applicants are requested to submit application forms and recommendation letters in the working languages of the Board's secretariat (English, French or Spanish);

(e) The Board selects representatives who have never participated in a session of a working group or the Permanent Forum as well as those who have already participated and could develop specialized capacity and strengthen the core group of participants in a working group or the Permanent Forum;

(f) The Board encourages indigenous organizations and communities to consider gender balance and, if possible, nominate one woman and one man;

(g) The Board encourages indigenous organizations and communities to consider nominating young persons;

(h) The Board encourages the former beneficiaries of the Indigenous Fellowship Programme of the Office of the United Nations High Commissioner on Human Rights to apply for grants to represent their indigenous organization or community at sessions of the working groups or Permanent Forum by sending duly completed application forms and meeting all the criteria for selection;

(i) Applicants are requested to indicate their responsibility in their organization or community;

(j) Applicants to the session of the Working Group on Indigenous Populations are requested to refer in their statements to the specific theme of the year.

Notes

[1] The Board of Trustees initially approved 13 grants and placed 4 on a contingency list. The additional 4 beneficiaries were approved upon receipt of an anticipated contribution from a donor government.